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THE PROFESSIONS

BY

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AND

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PREFACE

MUCH study has been devoted to trade unions; the history of the trade union movement as a whole and of many individual unions has been written, while the social and economic problems have received considerable attention. Professional associations, on the other hand, have been almost entirely neglected; there has been no study of the historical development of professional association or of the social, economic, and ethical problems involved. This is all the more astonishing inasmuch as the greater skill and responsibility of professional men as compared with members of trade unions render their associations far more interesting and important. Within the ranks of the professions are to be found most of those upon whose special skill the functioning of modern society depends. Moreover, the problems involved are of enduring interest to the public and are frequently discussed in the press. Indeed, events move so rapidly in the professional world that, since the manuscript of this book was completed, certain passages have already become out of date and some important steps have been taken that are not mentioned; this is the inevitable penalty for treating a living problem. Thus the General Council of the Bar has agreed to a modification of the two-thirds rule, the new procedure has been introduced into the High Court, and the Lord Chancellor has set up a committee to consider legal education and its relation to the universities. In other professions developments are taking place with equal rapidity, and in this connexion it must be borne in mind that, whenever facts and figures relating to the present are given, the picture which we attempt to draw is that of the professional world in the earlier part of last year.

Every profession lives in a world of its own. The language which is spoken by the inhabitants, the landmarks so familiar to them, their customs and conventions can only be thoroughly learnt by those who reside there. But no man is a citizen of more than one country, and we have been mere hurried visitors to the homes of others. There is no excuse for inaccuracy in the reports of what we have seen, but we realize that we may not have learnt the native idioms. We may call things by unfamiliar names and in a thousand ways betray our foreign origin. We would plead with those of our readers who belong to one of these worlds to be indulgent

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ABBREVIATIONS

B.M.A. = British Medical Association.

G.M.C. = General Medical Council.

N.U.T. = National Union of Teachers.

R.C.V.S. = Royal College of Veterinary Surgeons.

R.I.B.A. = Royal Institute of British Architects.

INTRODUCTION

'I HOLD', said Bacon, 'every man a debtor to his profession, from the which as men do of course seek to receive countenance and profit, so ought they of duty to endeavour themselves, by way of amends, to be a help and an ornament thereunto.'¹ To Bacon the term profession indicated certain vocations with peculiar characteristics, and in this sense it has been in use for centuries. Moreover, in Bacon's day the term was full of content, indicating the profound interest which these vocations had already aroused. During the last century there has been a quickening of interest; and to members of the professions and to the public alike the term is pregnant with meaning. The group formed by the professions is therefore no mere sociological abstraction; indeed the public has long been in advance of the sociologist in that it has recognized the essential interest and importance of professionalism.

Of late years the interest of the public in professionalism has become more direct and immediate, because numerous practical problems relating to the organization of the professions and to the availability of professional services have had to be faced. The problems of a public medical service and of legal aid for the poor have been widely discussed; the place of professional education in universities has received renewed attention; each session since the War Parliament has had before it at least one bill proposing to set up a state register for some profession not hitherto regulated by the State. Proposals of the latter kind raise questions connected with the 'closure' of professions, and public controversy has recently been aroused in relation to certain persons alleged to have been hardly treated by existing methods of closure. It is not only in relation to practical problems that the professions are now of interest; the position of associations within the State has become one of the themes most debated by political theorists, and there are few associations more important or powerful than those formed by professional men.

It can scarcely have escaped the notice of any student of contemporary affairs that there is no informed guidance when these practical problems come up for discussion. There has been, for instance, no attempt to define the conditions under which closure is desirable; there is no general understanding of the methods of closure now employed or of the manner in which they work. Not only is there no widespread acquaintance with the organization of

¹ Francis Bacon, *Maxims of the Law, Works*, ed. Spedding, vol. vii, p. 319.

the professions, but there is the greatest divergence of view about the value of professionalism and of all for which the professions stand. To one writer of great authority and influence they are objects of deep suspicion; to another, of less authority but of much influence, they are 'conspiracies against the public'. On the other hand, in the view of an author, whose political affiliations are the same as those of the writers to whom allusion has just been made, the professionalization of business is one of the most promising methods of social reform. This state of affairs is to be explained, at least in part, by the fact that information about the professions is almost wholly lacking. No adequate history of any one of the professions exists; we are speaking, of course, of the history of the practitioners and not of their techniques. We possess no more than a brief outline of the history of one or two professions and a few studies of special periods. In these circumstances it is not surprising that no analysis or appraisal of professionalism has been attempted, if we except the work of Mr. and Mrs. Sidney Webb which, though of great value, is admittedly slight and incomplete.¹ Until many investigators, approaching the subject from different angles, have worked upon it, generalizations can have little behind them; and such opinions as those to which we have referred can be no more than expressions of like or dislike of certain aspects of professionalism which, from lack of investigation, may not have been thoroughly understood.

There is thus need for the study of professionalism on many sides. Our concern is with professionalism in the society of to-day and of to-morrow, and we propose to direct our attention to the services which the professions can render and to the organization under which their services can best be performed. Our object is analysis, followed by constructive criticism, of the position at the present time. But since descriptive material is lacking, we must attempt to provide it; and our first task is a survey of the facts. It is not only the facts of the present day that are relevant, but also, to some extent at least, those of past times; therefore we have been compelled to widen our survey and to include some account of the origin and development of existing professions. In attempting to trace the process of development, we have had reason to regret the neglect of this field by students of social history. An adequate study of the rise of one of the great professions with its roots deep in the past would be the work of a lifetime; and we can do no more than attempt to disentangle the essential threads in

¹ *New Statesman*, supplements, 25th September and 2nd October, 1915, 21st April and 28th April, 1917.

the story of each profession, well aware that, lacking guides, and having time only for superficial investigation, even the main elements of each story may not have been properly grasped.

What are the limits of the field to be surveyed? There is no more agreement about the boundaries of professionalism than there is about its value. Any attempt to define professionalism would be premature until the material is before us. But what material shall we investigate? There are certain vocations of ancient lineage which by common consent are called professions, law and medicine among the foremost; they are the typical professions, and we must begin with them. There are many other vocations which, though more recently and therefore less firmly established, are nevertheless usually granted professional rank; all such vocations, architecture, engineering, chemistry, accountancy, and surveying for example, require mention. Looking farther afield, we discover vocations upon which the State has imposed a form of organization similar to that which it has imposed upon some typical professions; midwives are an example of such a vocation, and they deserve to be included, if only because the methods and results of this form of state intervention demand the most careful study. We also discover vocations which have built up voluntary organizations, closely resembling those found among established professions, and on this account some mention must be made of brokers and others. Finally there are a large number of vocations which claim professional status. But they offer little that is of interest to the present study, however significant they may be in their own sphere, and we propose to omit them from consideration. We also omit the Church and the Army. The former is left out because all those functions related to the ordinary business of life, education among them, which used to fall to the Church, have been taken over by other vocations. The functions remaining to the Church are spiritual, and we are only concerned with the professions in their relation to the ordinary business of life. The Army is omitted, because the service which soldiers are trained to render is one which it is hoped they will never be called upon to perform.

With this material before us, we shall be in a position to examine and evaluate all that is characteristic of professionalism. This is our aim; that being so, it is enough to survey the established professions and those other vocations which for any reason throw light upon professional organization and activity. It is no part of our purpose to attempt to draw a line between professions and other vocations; we are not concerned to say what vocations are

professions and what are not. We are therefore absolved from the necessity of examining all those vocations which claim professional rank in order that we may decide upon their true position. Indeed, the drawing of a boundary-line would be an arbitrary procedure, and we shall not offer, either now or later, a definition of professionalism. Nevertheless when we have completed our survey, it will emerge that the typical profession exhibits a complex of characteristics, and that other vocations approach this condition more or less closely, owing to the possession of some of these characteristics fully or partially developed.

The first part of this book is occupied with a survey of this field. We have attempted to group related professions together; we begin with the distinct legal group and go on to the equally well-marked medical group. Outside the vocations in these groups there are two others closely regulated by the State which it is convenient to treat next, namely the merchant navy and mine management. Among the remaining professions we can distinguish a clearly marked scientific group. Those which follow are not easy to classify; but certain professions within the world of business stand apart, and we take them last. Those which are situated between the scientific and the business professions have been distributed among two groups. The professions falling within each of these two latter groups have clearly something in common; so long as this is so, it is not worth while to attempt to specify that which relates them, since this classification is only made for purposes of presentation and has no other significance. The amount of space devoted to each profession is not proportional to its importance. Some professions have been treated at greater length than others because they happen to illustrate points of general interest. Moreover, those professions which are taken first occupy more space than the others; all professions show certain similarities, and it is possible to describe more briefly those professions which are treated later because those aspects of their history and organization, which are, so to say, of common form, can be passed over with a reference to what has already been said of other professions.

In Part II we attempt to draw together the threads so far as the emergence of professions is concerned. The segregation out of professions, which has been in progress since early mediæval times, is still going on; and certain features of the process do not come to light until we examine the phenomenon of emergence as a whole. In Part III we are concerned with the analysis and evaluation of professional organization and activities. We have made our constructive proposals whenever in the course of the description or the

analysis we have discovered apparent gaps in the organization or matters which seem to deserve criticism. There only remain some questions concerning the place which professions might occupy in the society of the future, and they form the subject-matter of Part IV.

We have primarily in view the professions of England and Wales. The organization of certain professions, the medical profession, for example, is similar throughout Great Britain, and in such cases our treatment holds good for a wider area. But where organization is different outside England and Wales, we have made no attempt to describe it except in a few cases where Scottish conditions illuminate those prevailing in England. In Appendix I will be found an estimate of the number of those belonging to the various groups with which we have dealt.

LAWYERS

Barristers

THE organization of the Bar has grown up round the four Inns of Court: Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn. Each of these bodies is governed by a similar constitution, characterized by Sir Frederick Pollock as 'a survival of medieval republican oligarchy, the purest, I should think, to be found in Europe'.¹ They are voluntary unincorporated societies consisting of benchers, barristers, and students; the benchers, who form the governing body, fill vacancies in their number by co-option from among the barristers, and in practice consist of the senior members, including any judges who may belong to the Inn. But no member, whatever his seniority or standing, not even a judge, has any right to be called to the bench.²

It is the benchers in each Inn who confer the degree of 'barrister-at-law' by calling one of their students to the bar. By agreement between the benchers the qualifications for call are the same in each Inn.³ The candidate must first secure election as a student, for which purpose he must show that he is a 'gentleman of respectability' and has received a general education up to school certificate standard. If he is a solicitor he must procure the removal of his name from the roll of solicitors. After being elected a student he is required to 'keep' twelve terms in his Inn. 'Keeping', however, does not involve residence, but merely 'eating dinners'. There are four terms in the year, and a term is 'kept' by dining six times in hall during the term—three times in the case of members of a university. By giving twelve months' notice a student who has practised as a solicitor for five consecutive years becomes exempted altogether from the keeping of terms.

During the waiting period the student is 'recommended' to 'read in chambers'—that is to become the pupil⁴ of a barrister—for

¹ Sir Frederick Pollock, *Essays in the Law* (1922), p. 134.

² Decided in 1845 in the case of A. Hayward, Q.C.; see Alexander Pulling, *The Order of the Coif* (1897), pp. 178 and 179.

³ See the 'Consolidated Regulations' of the Inns of Court, printed in the *Calendar* of the Council of Legal Education, *Calendar*, 1930-1, pp. 14 ff.

⁴ It should be explained that here and throughout this work we use the terms 'apprenticeship' and 'pupilage' indifferently to indicate any system of practical professional training where the student enters the employment of a practising professional man at less than the market rate of salary, the employer undertaking to instruct him in the practice of the profession. A distinction is sometimes drawn

it may afford an adequate training in chamber work, does not, and cannot, provide any training in the art of advocacy itself; and it is the absence of any provision for systematic instruction in that art which constitutes the most surprising feature of the modern system of training at the Bar. An occasional 'moot', or sham lawsuit, is held under the auspices of one of the Inns; but participation is entirely optional. Something may also be learnt by the industrious student or pupil who attends in court and listens to the speeches of others. But the broad result is that the greater part of a barrister's forensic experience, and possibly also much of his experience of chamber work, is acquired at the risk and expense of his clients after he has begun to practise.

The objections to such a system from the client's point of view are too obvious to need emphasis. From the barrister's standpoint it has objections that are no less serious, though they are perhaps less immediately apparent. The rigid separation of the English legal profession into two mutually exclusive 'branches', which results from the rule forbidding the admission of a solicitor to an Inn of Court so long as he remains a solicitor, is familiar; but its implications are less well understood. It is only in the drafting of documents that the functions of barristers and solicitors overlap. The barrister's right of audience is not, save in certain inferior courts, shared by the solicitor. Correspondingly, the taking of those initial steps by which the law is set in motion is part of the legal monopoly of solicitors and is wholly outside the sphere of counsel. This has profoundly affected the relations between the public and the two branches of the profession. The issue of a writ, or indeed the mere threat of proceedings, is generally enough to bring an opponent to terms. It is the solicitor, therefore, whom the layman consults in the first instance; and a practice, which began as a natural consequence of the distribution of functions between the two branches of the profession, has since hardened into a rule of etiquette which makes it improper for counsel to accept a brief, other than a 'dock-brief', except from a solicitor or the clerk to a local authority.¹ Thus the solicitor has become the general practitioner of the law, and counsel a specialist or consultant whose clients come to him, on the recommendation of their general legal adviser, only when a dispute has reached the stage of being taken into court, or when a second opinion is desired. At that stage the solicitor is naturally anxious to secure for his client the best ability which his means can command. In making his selection he is

¹ A prisoner in the dock, on tendering the customary fee of £1 1s., is entitled to have the services of any barrister present in court at the time in robes.

bound to have regard to established reputations. But so long as call to the bar affords no real evidence of fitness to practise, established reputations must remain doubly important in the eyes of the solicitor.

Moreover, owing to the obstacles in the way of transferring from one branch of the profession to the other, the barrister, unlike the medical consultant, cannot without great difficulty begin his career as a general practitioner. Nor is it easy to obtain salaried employment at the Bar. It is contrary to professional etiquette for one barrister to delegate the conduct of a case in court to another barrister without the consent of the client; and, though there is no objection to one barrister employing another as an assistant or 'devil' to do chamber work for him, so long as he exercises supervision over the work done, yet even 'devilling' is comparatively rare except at the Chancery Bar, where the drafting of conveyances may form the larger part of a practice. There are, however, ways in which these disabilities can, to some extent at least, be circumvented. The most prudent course, it is popularly believed, is for the young barrister to ally himself by marriage with the family of a litigating solicitor. At all events it becomes apparent that the student who has read in a solicitor's office as well as in chambers has secured an additional advantage over and above such knowledge of affairs and of legal practice as he may have picked up. But the chambers which a barrister enters, either as pupil or as tenant, are an equally important factor governing his prospects in early years. Partnership between barristers is forbidden by the etiquette of the Bar, on the ground that the solicitor must be free in the interests of the lay client to select the individual counsel whom he considers most suitable in any particular action.¹ But the courts and squares of the Temple and Lincoln's Inn are built in staircases like an Oxford college, and each landing on a staircase constitutes one, or more often two, sets of chambers. Each set of chambers has a single head clerk who receives a commission (roughly 2½ per cent.) on every fee paid to every barrister in the chambers. This practice, which has, from the public point of view, nothing to recommend it, goes far to render nugatory the rule forbidding partnership. It is to the interest of the clerk to keep as much business in the chambers as he can; and when for any reason a tenant declines to accept a brief, or, as more often happens,

¹ *A fortiori* partnership between a barrister and a solicitor is forbidden; so also is anything in the nature of profit-sharing, and even an agreement by a barrister to undertake on behalf of a solicitor to do all his cases of a particular class for a uniform fee.

the barrister who has been instructed to appear finds at the last moment that he is engaged in another court, the clerk uses his best endeavours with solicitor or the solicitor's clerk to secure the brief for another tenant; and, if he knows his job, some young man who has made himself familiar with its contents will be sent down to do the case. He may not get the fee; but at least he will get experience and attract the notice of the solicitor. A set of chambers thus has a very definite goodwill attached to it, although no formal partnership exists between the tenants.

It has been contended that the barrister is to be regarded as a specialist or consultant relatively to the solicitor. There are, however, specialisms within the Bar itself. The Chancery Bar and the Common Law Bar are so distinct that it has long been unusual for one man to practise on both 'sides'. Specialization, however, extends further than this. There is an Admiralty Bar, a Patent Bar, a Commercial Bar, and other smaller specialisms centring round certain sets of chambers. But apart from these specialisms of subject-matter there is an important specialism of function of which mention must be made. The work of a barrister is not limited purely to advocacy. Apart from the administrative work in connexion with litigation for which the solicitor is responsible, there are certain other preliminary steps in an action which may radically affect the way it will go at the trial. It is generally known, for example, that each party is required to state beforehand the positive case he proposes to set up, and also how much of his opponent's case he proposes to deny. These written statements or pleadings are settled by counsel. Certain other preliminary work also finds its way into chambers. It is, however, the ambition of most barristers to confine their practice purely to advocacy, which is the most difficult, and the most responsible, as well as the most lucrative part of their work. The same factor, however, which makes the early stages of a career at the Bar so difficult—the very high premium on ability—also makes it possible for a certain number of its leading members to relinquish chamber work altogether. The reluctance of solicitors to risk their clients' fortunes in inexperienced hands serves only to intensify the competition for those whose reputations are made.

There is nothing to prevent any barrister who thinks he can afford the sacrifice from announcing that he is no longer prepared to undertake chamber work. However, it is the invariable practice to apply to the Lord Chancellor to be recommended to the King for appointment as one of His Majesty's Counsel—'K.C.' for short. This dignity has ceased to have any connexion with the litigation of

the Crown. But it is a rule of etiquette that no 'silk'¹ should appear in any case without having a member of the junior Bar briefed with him; consequently 'taking silk' is a convenient way of publishing a decision only to appear for clients who can afford to employ another counsel to do the preliminary work. By a further rule of etiquette, known as the 'two-thirds rule', this specialism of function has been made to serve the purpose of the junior Bar. If the client can afford two counsel, he can also, it is contended, afford to pay his junior counsel more than the somewhat exiguous fee which the junior could have demanded had he been appearing alone. It is therefore provided that the fees marked on the briefs shall be in the proportion of 2:3 or 3:5.

Apart from the 'two-thirds rule' the Bar makes no attempt to regulate the remuneration of its practising members. There is a rule that counsel should not give professional advice for less than the 'recognized minimum' fee of £1 1s.;² but all this amounts to is that it is inconsistent with the dignity of counsel for his brief or instructions to be marked in fractions of a guinea, and there is no objection to his giving his services for nothing. Indeed the Bar encourages its younger members to appear gratuitously for poor persons and thereby to acquire the experience which the organized system of training does not provide—a practice which may be more beneficial to the profession than to poor persons. In any case few barristers would find it easy after meeting travelling expenses and rent of chambers to earn a living out of guinea briefs.

Strictly a barrister's fee is an *honorarium* only. He is entitled to refuse a brief if his fee is not paid when it is delivered, but if he does not do so, he cannot recover the amount 'by any legal process either from the solicitor or the client'.³ Historically this disability is probably to be traced back to classical times. It may also be connected with the fact that counsel was originally merely the litigant's 'friend' who came with him into court to prompt him.⁴ But to-day at all events 'the reason of the rule that barristers cannot sue for their fees is that their emoluments are not to depend upon

¹ King's Counsel used to appear robed in silk gowns. A K.C.'s gown, though no longer of silk except in the House of Lords, is still made of a different material from the 'stuff' gown of the 'junior' barrister.

² See W. V. Ball and F. C. Watmough, *Annual Practice*, 1932, p. 2516. The figure there given, £1 3s. 6d., includes the minimum clerk's fee of 2s. 6d. It is also 'a breach of professional etiquette habitually to accept a lower fee on a brief in the County Court than that commonly allowed on taxation to a successful party in an action for the amount of the claim in question'. *Ibid.*, p. 2515.

³ *Laws of England*, ed. Earl of Halsbury, 2nd ed., vol. ii (1931), para. 700.

⁴ See an article by Maitland where this view is put forward in H. D. Traill and J. S. Mann, *Social England*, vol. ii (1902), p. 46.

the event of the cause'.¹ If it were carried no further than this it would be unobjectionable. But 'the principle which prevents a barrister from suing the client . . . also prevents the client from suing counsel'.² The barrister therefore, alone among professional men, cannot be proceeded against either for breach of contract or for negligence.³ Moreover it can be made very unpleasant for a solicitor who does not pay counsel's fees; and if the solicitor has actually received payment from the client, the Bar Council⁴ will prefer an application to the Discipline Committee⁵ to have his name struck off the roll of solicitors. The net disability therefore of this ostensibly reciprocal rule is far from being on the side of counsel. It should perhaps be added that, if the client has no legal remedy, he nevertheless has the protection of an elaborate code of professional conduct; and undoubtedly there are cases where, though he could not take action at law, it would yet be open to him to bring the conduct of his counsel before the notice of certain authorities with a view to his being disbarred.

The right to practise at the Bar, as it can only be conferred, so it can only be taken away, by the benchers of the Inns of Court, who can 'disbar' those whom they have called to the bar, and 'disbench' those whom they have called to the bench of the Inn. In the exercise of this jurisdiction over their members the Inns are entirely independent of the courts, and their action cannot be called in question by them. The legal status of the Inns is thus wholly anomalous, in that they enjoy the privileges, but are exempt from the obligations, of an ordinary voluntary unincorporated society. The benchers can themselves resort to the courts to enforce their decisions or to recover their property, but they 'cannot, in respect of any act done by them in their official capacity, be made defendants in any legal proceedings'.⁶ They are, however, subject to the jurisdiction of the Lord Chancellor and the judges of the High Court in their capacity as 'visitors',⁷ and any member who has any complaint against the benchers of his Inn is entitled to appeal to the judges. Up to 1837 a non-member who had been refused

¹ *Laws of England*, ed. Earl of Halsbury, 2nd ed., vol. ii (1931), para. 701.

² *Ibid.*, para. 705.

³ But, by a rule of etiquette, 'where a barrister accepts a brief upon an express undertaking that he will personally attend throughout the case, he ought, if he does not so attend, to return his fee'. *Laws of England*, ed. Earl of Halsbury, 2nd ed., vol. ii (1931), para. 705, note.

⁴ For the Bar Council, see below, p. 17.

⁵ For the Discipline Committee, see below, p. 25.

⁶ See *Laws of England*, ed. Earl of Halsbury, 2nd ed., vol. ii (1931), para. 653.

⁷ Parliament was extremely careful not to disturb, or even to define, this jurisdiction in the Judicature Acts; see 15 & 16 Geo. V, c. 49, s. 34, which re-enacts, with merely verbal alterations, 36 & 37 Vict., c. 66, s. 12.

admission had no legal remedy whatever; but by consent of the Inns, the judges now also entertain appeals against a refusal to admit. However, appeals of all kinds are exceedingly rare; and in considering the chances of a successful appeal, it has to be remembered that the judges have all been members of the Bar, and that, now that they are no longer required to be Serjeants,¹ they continue to belong to their Inns, and in fact are always benchers themselves.

The visitational jurisdiction of the judges is explained on the ground that: 'All the power which the Inns of Court have concerning admission to the bar and the disbaring of barristers is said to be delegated to them from the judges.'² If this were an undoubted proposition of law, it would be a point of some importance, for the judges could then resume their authority if they conceived that it was being abused by those to whom it had been delegated by them. In fact, however, the position has never been properly defined; and it seems more appropriate to regard the benchers and not the judges as professional licensing authorities, subject to appeal to a tribunal consisting largely of the same personnel.

Since very early times the highest courts have always sat in London, and the great majority of barristers have practised in London, using the Inns of Court once as places of residence and now as luncheon and dining clubs. Periodically the judges perambulated the assize towns of the country, and members of the Bar went 'on circuit' with them, forming 'Circuit Messes' to supply their social needs while out of London. In a large provincial city there might be found a resident local Bar, and with the further decentralization of justice which followed upon the institution of the modern county courts, the local Bars increased in number and importance, so that to-day it is unusual for members of the London Bar to travel farther than the assize towns of the midland and southern counties. But the Circuit Mess survives, and in the course of time it has been made to serve something more than purely social purposes.³ All England outside London and Middlesex is divided into 'Circuits', and professional etiquette decrees that a barrister wishing to practise at assizes on any circuit must join the Circuit Mess. For this purpose he must be proposed and seconded; and there is an entrance fee which varies from one circuit to

¹ This requirement was abolished in 1873. For the Serjeants, see below, p. 31; they ceased on their appointment to belong to an Inn of Court.

² J. R. V. Marchant, *Barrister-at-Law* (1905), p. 5, where he quotes as authority the judgement of Lord Mansfield in *Rex v. The Benchers of Gray's Inn* (1780), 1 Doug. 353, at p. 354.

³ For an account of the Circuit Messes, see *Laws of England*, ed. Earl of Halsbury, 2nd ed., vol. ii (1931), paras. 657 ff.

another. In the case of the Northern Circuit it is £7 7s. No barrister can join more than one circuit. The Circuit Mess, besides dealing with matters of practice and procedure at assizes, supervises the professional conduct of its members when on circuit and punishes breaches of etiquette.¹

The monopoly of the Circuit Bar is nominally secured by a rule that a barrister should not appear on any circuit to which he does not belong, without a special fee of 50 guineas and without having a member of the Circuit Bar briefed with him. In practice, we understand, the member's brief, if he is not already the 'junior' in the case, is marked at the nominal fee of £1 1s.; while it is clearly not impossible, in cases where the brief fee of the barrister who 'goes special' would in any case have exceeded 50 guineas, to have regard, in fixing the brief fee, to the fact that he is also entitled to the special fee. But the effective security of the Circuit Bar is to be found less in these rules of etiquette than in the general ignorance among country solicitors of London reputations.

The right to appear at Quarter Sessions, outside London and Middlesex, is also reserved by etiquette to members of the circuit in which a county or borough is situated. But to each Sessions there is generally attached a Sessions Bar; and a barrister should not appear without a special fee at any Sessions where there is a Sessions Bar, even on his own circuit, unless he has 'opened Sessions'. This is done by appearing in robes at a sitting of the Sessions within a certain period of joining the circuit. Where there is a Sessions Bar there is normally a 'Sessions Mess' which, subject to the rules of the Circuit Mess, regulates the conduct of its members.²

Up to comparatively recent times there was no organization representative of the Bar as a whole. But in December 1883 it was determined at a general meeting of the Bar to set up a body to be called the Bar Committee. The object of the Committee was 'to collect and express the opinions of the members of the bar on matters affecting the profession, and to take such action thereon as may be expedient'.³ It was an executive body elected by the whole Bar; and it began the work of codifying in written opinions the traditional etiquette of the profession. The Committee, however, depended for funds upon the voluntary contributions of

¹ The sentences are not believed to be very severe. Sir Harold Morris (*The Barrister* (1930), pp. 119 and 120) relates how it was once his duty to fine the late Sir Edward Marshall Hall a dozen of champagne for allowing his photograph to appear in a newspaper.

² On the Sessions Bars see *Laws of England*, ed. Earl of Halsbury, 2nd ed., vol. ii (1931), para. 659.

³ Quoted *ibid.*, para. 660.

individual barristers; and in 1894 financial difficulties led to its reorganization. To make provision for an assured income it was decided to appeal to the benchers of the Inns of Court. The benchers agreed to grant financial assistance provided that they in return were given representation upon the reconstituted committee. This was agreed to; and the constitution of the new body, called the General Council of the Bar, or Bar Council for short, was approved at general meetings of the whole Bar.¹ The benchers are entitled to nominate about one quarter of the members of the Council; but in fact they have never yet exercised their right. A majority of the Council consists of elected members, and every barrister having an address in the Law List is entitled to receive a voting paper. Not less than half of the elected members must belong to the 'junior' Bar, while one eighth of the elected members are required to be barristers of less than ten years' standing. Provision is made for a small number of co-opted members, and the Attorney-General and Solicitor-General belong *ex officio*. The judges are not represented.

So long as the benchers refrain from exercising their rights, the Bar Council may fairly be described as a democratically chosen body. It has not displayed the alertness and vigour of certain associations we shall encounter in other professions, where membership is voluntary and the financial obligations of membership provide a stimulus to interest and good management. But it is recognized as the accredited representative of the Bar, and the instrument under which it came into being provides that 'its duty shall be to deal with all matters affecting the profession and to take such action thereon as may be deemed expedient'.²

The representative character of the Council has received wide recognition. For example, it appoints members to sit on the rule-making committees set up under the Criminal Justice Act 1907 and under the Land Registration Act 1925; it is represented on the governing bodies of a number of universities; its advice is sought by the government and by the promoters of bills before Parliament, while government bills and proposed departmental regulations, if they affect the administration of justice, are commonly referred to the Council beforehand for its observations. It is noteworthy that the Inns of Court are never consulted in this way by persons or bodies desiring to ascertain the opinion of the Bar. Indeed it is significant of the position they are coming to occupy

¹ *Laws of England*, ed. Earl of Halsbury, 2nd ed., vol. ii (1931), para. 660.

² Quoted *ibid.* (where the constitution of the Bar Council is set out).

that they may themselves be approached through the medium of the Bar Council. In 1926 when the Law Society, acting on behalf of solicitors, decided to approach the Bar on the subject of the rules governing transfer from one branch of the profession to the other—a matter peculiarly within the province of the Inns of Court—they submitted their proposals in the first instance to the Bar Council. The Council, having considered them, sent them on to the benchers with recommendations for their adoption. The benchers accepted the recommendations of the Council, and the Consolidated Regulations were amended accordingly.

On its own part the Council watches legislation in the interests of the Bar and the litigating public. There is a permanent standing committee on the business and procedure of the courts. Questions arising at Assizes or Quarter Sessions are left to be dealt with by the Circuit and Sessions Bars, though the Council will intervene where necessary to secure co-ordination of policy. But the Bar Council has no study activities of a wider kind; and, though it has signified its approval of the 'two-thirds rule' and of the 'recognized minimum fee' before referred to, it does not in general concern itself with the remuneration of practising barristers, and no attempt is made to secure the observance of a scale of fees. On the other hand, no hesitation has been felt in taking up the cause of lawyers employed in the civil service; and the Civil Service Legal Society looks to the Bar Council for support when negotiating with the Treasury for increases of salary.

It is in relation to professional etiquette that the Council has shown greatest activity. But it has no disciplinary powers of its own. At the general meeting of the Bar, out of which it arose, it was agreed that the Council should have no power to interfere with the property, jurisdiction, powers, and privileges of the Inns of Court, and that no part of the disciplinary jurisdiction of the benchers of the Inns of Court should be exercised by the Council, and that the Council should hold no inquiry into alleged misconduct of individual members of the Bar, except for the purpose of reporting if necessary to the Inn of which the barrister is a member.¹ The Council is principally occupied in answering queries submitted by barristers upon questions of conduct and usage. For this purpose the Council employs the whole-time services of a barrister, who has the assistance of a permanent standing committee. Occasionally questions of greater importance, or matters where considerable doubt or disagreement exists, are dealt with by a special committee upon the Council's own initiative. The opinions upon points of

¹ See J. R. V. Marchant, *Barrister-at-Law* (1905), p. 10.

etiquette are set out in the *Annual Statement* of the Council. The *Annual Statement* is not published, but is circulated to barristers and submitted to a general meeting of the Bar held once a year under the presidency of the Attorney-General.¹ The benchers, in adjudicating upon any case of alleged misconduct brought before them, are not bound by the opinions of the Bar Council, though the latter would naturally carry great weight, and they are the only written source of the professional etiquette of the Bar. Moreover, it is becoming the usual practice for cases of alleged misconduct to be reported to the Council in the first instance. The Council then exercises its discretion as to whether or not the case should be brought to the notice of the barrister's Inn. This system of using the Bar Council as a kind of unofficial grand jury has undoubtedly much to recommend it.

Solicitors

THE solicitors' profession, unlike the Bar, is closely regulated by statute law. The solicitor's primary function, upon which the rest of his practice is based, is that of acting as general agent to persons engaged in litigation. From the Middle Ages down to comparatively recent times each of the superior courts maintained a panel or roll of persons from amongst whom the suitor had to select his agent. They were 'officers of the court' and as such completely subject to its control. The court laid down the qualifications for admission, limited the fees which might be charged to clients, and maintained discipline through its power to strike off the roll. In the nineteenth century the ancient superior courts became merged in a single Supreme Court, with a single roll of 'Solicitors of the Supreme Court'.² But, though a solicitor is still 'an officer of the court',³ the court no longer possesses the same unlimited powers of control. For a hundred years the profession has been engaged in a struggle for self-government. The lead in this struggle has been taken by a modern voluntary association, the Law Society; but every step has been found to require parliamentary sanction, and the Society has not won for solicitors the autonomy and independence which are the cherished privileges of the Bar. It has subjected them instead to the detailed regulation of innumerable Acts of Parliament, while it has only partially freed them from the dominance of the judges.

Acts of Parliament lay down the qualifications for admission,

¹ A summary is also sent for publication in *The Times*.

² 36 & 37 Vict. c. 66, s. 87; now repealed and re-enacted (in effect) by 15 & 16 Geo. V, c. 49, s. 215.

³ 15 & 16 Geo. V, c. 49, s. 215 (1).

while the Society, as representing the profession, merely administers the Acts, and a committee of judges, consisting of the Master of the Rolls, the Lord Chancellor, and the Lord Chief Justice, has power in many cases to disallow the regulations made by the Society. There are three statutory examinations, preliminary, intermediate, and final, of which the Society is given the 'entire management and control',¹ subject to two important provisos: the regulations must be submitted to the committee of judges for approval, while a candidate who has failed in the intermediate or the final can appeal to the Master of the Rolls, either 'on account of the nature or difficulty of the questions put to him by the examiners, or on any other ground whatsoever'.² The examinations are generally understood to be more severe than those which qualify for the Bar.

In two respects the course of training prescribed by Parliament for solicitors shows a marked improvement on that laid down for barristers by the Inns of Court. Before a candidate can sit for the solicitors' final examination, he is obliged, unless he can satisfy the Law Society that it is 'for geographical or other reasons impracticable', to have attended 'a course of legal education' at a law school 'approved' by the Society.³ The Society has its own school in Chancery Lane, and most of the universities and university colleges have 'approved' schools. The second point of difference is in respect of practical training. At the Bar it is usual to serve a period of apprenticeship, but much of the necessary practical skill remains to be picked up during the early years of practice. For solicitors, on the other hand, apprenticeship is compulsory; every candidate for the final examination must have been 'bound by contract in writing to serve as clerk' to a practising solicitor.⁴ The 'articles', or terms of the contract, have given their name both to the contract itself ('articles') and to the 'articled clerk'. The normal period of articles is five years, though the term is reduced to three years in the case of university graduates,⁵ solicitors' clerks of ten years' standing (the 'ten-year man'), and barristers of less than five years' standing. Barristers of five years' standing and upwards are exempted altogether; and, since they are also exempted from all the examinations except the final, it is easier for a barrister to become a solicitor than for a solicitor to be called to the bar.

When he has completed his period of service and passed the examinations, the articled clerk is entitled to be admitted and

¹ 40 & 41 Vict., c. 25, ss. 4, 5, and 6.

² Ibid., s. 9.

³ 12 & 13 Geo. V, c. 57, s. 2 (1). A school which the Society declines to approve can appeal to the Master of the Rolls.

⁴ 6 & 7 Vict., c. 73, s. 3.

⁵ Those who have taken a law degree are also exempt from all the examinations except the final.

enrolled. The procedure is somewhat elaborate. The roll of solicitors is kept by the Law Society 'as Registrar of Solicitors',¹ subject to any rules or regulations which may be made by the committee of judges. The Society was appointed Registrar by the Solicitors Act 1843; but it holds this office during the pleasure of the committee of judges, who may appoint any other 'fit and proper person'.² It is the duty of the Registrar to enter in the roll the name of every person 'admitted'; but it is the Master of the Rolls who actually admits. He in his turn is bound to admit any person who produces a certificate from the Law Society of having passed the final examination, though he may, as we have seen, entertain an appeal by any candidate to whom the certificate has been refused.

Once he has been admitted and enrolled and has taken out an annual practising certificate,³ the solicitor enters into the enjoyment of a monopoly no less complete than that of the Bar. It is secured by sanctions of the most comprehensive order. First, his title is protected, and anybody, not a solicitor, who 'takes or uses any name, title, addition or description implying that he is duly qualified to act as' a solicitor, 'or that he is recognized by law as so qualified' is liable to a fine of £10.⁴ It is evident that these words are not narrowly interpreted. The *Accountant* records the case of a debt collector who, by heading his correspondence with the words 'in practice from 1896', was held to have implied that he was a solicitor and was fined £5.⁵ Secondly, any unqualified person who acts as agent in any litigation, which is defined in the widest terms as being to 'sue out any writ or process, or commence, carry on, solicit, or defend any action, suit, or other proceeding', is subject to numerous penalties.⁶ He cannot bring an action for the recovery of his fees; he can be imprisoned for contempt of court; and, in addition to any other penalty, he is liable to a fine of £50 if the Law Society choose to prosecute. In non-litigious business practice by the unqualified is not absolutely prohibited. The layman is entitled to advise upon questions of law and to charge a fee for his advice. He may also draft legal documents; provided, however, in this case that no charge is made. Any person, other than a barrister, solicitor, or notary, who, 'for and in expectation of any fee, gain or reward, draws or prepares any instrument relating to real or personal estate, or to any proceeding in law or equity,

¹ 51 & 52 Vict., c. 65, s. 5.

² 6 & 7 Vict., c. 73, s. 21, as amended by 15 & 16 Geo. V, c. 49, s. 215 (3).

³ See Appendix III.

⁴ 37 & 38 Vict., c. 68, s. 12.

⁵ Vol. lxxv (1926), p. 552.

⁶ 6 & 7 Vict., c. 73, s. 2; for the penalties see 23 & 24 Vict., c. 127, s. 26.

shall incur a fine of fifty pounds'.¹ One or two documents are excepted, notably wills. Solicitors have one other privilege. In certain inferior courts² they have been given a qualified right of audience; that is to say the solicitor who is acting generally for any party is entitled to present that party's case. But the provision is intended to be for the benefit of litigants rather than solicitors. Consequently one solicitor cannot be briefed by another, and, if the litigant can afford to pay for a specialist advocate, counsel must be briefed.³ This does not, however, prevent one member of a firm of solicitors specializing in advocacy in the sense of doing all the advocacy work for the firm.

Though solicitors are not alone among the professions in enjoying a legal monopoly of certain functions, they constitute the only instance in which the law has thought fit to prevent abuse of the monopoly by setting up a maximum scale of fees. Every client who receives a bill from his solicitor, whether the bill relates to litigation or not, has the same rights as an unsuccessful litigant who is ordered to pay the 'costs' of his opponent; that is to say a right to have the bill audited or 'taxed' by an officer of the court known as the 'Taxing Master', and any excessive charges disallowed. The amount allowed for each item is the same, generally speaking, whether the taxation is as between a client and his own solicitor or as between the parties to an action. That many successful litigants who have been awarded costs still find themselves out of pocket as a result of going to law is due to the fact that the Taxing Master can, and very commonly does, disallow items between party and party which he does not disallow as between solicitor and client.⁴

Bills are taxed by reference to scales of fees, originally fixed by the judges, but now drawn up by committees upon which solicitors are represented, though on which the judges still retain a majority. The scale of fees for litigious business is settled by the Rule Committee of the Supreme Court under its general authority to make rules governing the procedure of the court; for 'other' business the scale is fixed by an *ad hoc* body set up under the Solicitors Remuneration Act.⁵ In the case of an order amending the scale for 'other' business the council of the Law Society has a statutory

¹ 54 & 55 Vict., c. 39, s. 44.

² And in the High Court in bankruptcy proceedings.

³ See, for instance, 51 & 52 Vict., c. 43, s. 72.

⁴ For example the costs of having a witness in readiness whom the judge at the trial thinks it unnecessary to call.

⁵ 44 & 45 Vict., c. 44. There is also a County Court scale drawn up by the County Court Rule Committee.

right to be consulted beforehand. An order amending this scale must also be laid before Parliament and may be disallowed by Order in Council upon an address by either House.

The existence of the scales and of the machinery for their enforcement outlined above does not mean that they are never exceeded. The client is not always aware of his rights, and, if aware of them, not always disposed to pursue them. Possibly the only way of protecting the client from the consequences of his own ignorance would be by compelling the solicitor to notify his client in writing of any excess charged. That he is not now under any obligation to do so is a little curious in view of the attitude of the law towards agreements to exclude the scale. For upon such agreements, though it does not prohibit them, the law looks with a somewhat jealous regard. Where the agreement relates to business in an action it must be examined and allowed by the Taxing Master; where it relates to other business the client can apply to have it taxed if he thinks fit. The Taxing Master cannot in either case himself cancel the agreement; but on his certificate it can be brought before the court and the court can set it aside. However, agreements, other than agreements to remunerate by salary instead of by fee, are not often made.

The scale does not prevent solicitors making very comfortable incomes,¹ and it is not seriously resented by them. Admittedly solicitors do not succeed in amassing the huge fortunes which characterize the highest ranks of the Bar and the medical profession; but how far this is due to statutory limitation of fees is an open question. Large incomes are in general only found in those professions which give the amplest scope for variations in ability. It is not to be supposed that, even under complete freedom of contract, the value of a solicitor's services would be computed with the same nicety as that of the highly personal ability of an advocate or a surgeon.

A solicitor's practice is by no means limited to the sphere of his monopoly. As the general practitioner of the law he is the only lawyer with whom the man in the street normally comes into contact, and he is expected, not merely to extricate him from a difficulty he is already in, but also to keep him out of difficulties

¹ It is to be observed that the maximum scales have only been made to apply to work of a specifically legal character. It seems clear that under the Solicitors Remuneration Act a General Order could be made fixing maximum fees for, say, rent collecting (see 44 & 45 Vict., c. 44, s. 2); and it seems equally clear that a bill for rent collecting could be sent to be taxed (see 6 & 7 Vict., c. 73, s. 37). However, it does not seem that this is ever done, so that in practice, if not in law, solicitors remain free to charge what they can get for work which is not part of their statutory monopoly.

altogether. He thus becomes a sort of general adviser to his clients in regard to their affairs. Solicitors are often looked to for advice on investment and insurance. In country districts they not infrequently undertake the management of their client's property; and they are consulted by tradesmen and other small-scale entrepreneurs in regard to the conduct of their businesses. The fact that many solicitors find it worth while to employ an accountant indicates that such work may form a not unimportant part of a practice.

A solicitor's work thus offers closer and more varied human contacts than practice at the Bar. It also brings him into far more direct touch with some of the least reputable elements in the community. It is not seldom his duty to assist with his professional services persons of whose motives he cannot fail to be suspicious.¹ Moreover, solicitors are frequently entrusted with large sums of money belonging to other people and often to very ignorant people. They are thus exposed to considerably greater temptations than other professional men, and it would hardly be surprising if there were to be found in their ranks a certain number of black sheep, though the public has formed an exaggerated idea of the actual number of such persons. A solicitor who has swindled his client may be sure of a good press, and the impression has thus been fostered that a large number of solicitors are scamps. In a recent session two Bills were simultaneously before the legislature for subjecting solicitors to stricter disciplinary control. It is undoubtedly true that at one period solicitors as a class were not above suspicion. Dr. Johnson is reported to have replied, in answer to an inquiry as to the identity of some one who had just gone out of the room, that he did not care to speak ill of any man behind his back, but he believed the gentleman was an attorney; and readers of *The Pickwick Papers* will recall the practice of Messrs. Dodson and Fogg in which they were universally considered to be among the sharpest of the sharp. But although within the profession standards may still vary more widely than within other professions, with the rise of the Law Society and the attendant improvement in education and growth of a sense of professional responsibility there has been a real improvement in ethical standards, and the standard observed by the great majority of solicitors no longer falls below that of other professional callings.

In the struggle for disciplinary autonomy, as for educational

¹ There are some solicitors who refuse to undertake any but the 'better class' of work; though it is questionable if in so doing they show a very high sense of the obligations of their calling.

autonomy, the profession has not escaped conflict with the judges and the legislature. Here too the outcome has been a compromise. At the passing of the Judicature Act the Supreme Court succeeded to the disciplinary jurisdiction of its predecessors over those who practised before them; but the authority of the judges did not long remain unchallenged. Under the Solicitors Act of 1888 the Society secured the appointment of a body known as the Discipline Committee. The Committee now consists of not more than seven nor less than three members or past members of the Council of the Society. They are nominated by the Master of the Rolls, who can remove any member of the Committee or fill any vacancy. Under the Act of 1888 the Committee was little more than a kind of professional grand jury. Every application to strike a solicitor off the roll had to go before the Committee in the first instance; but all the Committee could do was to dismiss the charge or report the case to the court, which then made such order as it thought fit. Admittedly the court attached considerable weight to the findings of the Committee.¹ Nevertheless, from the standpoint of the profession, 'the position could never be deemed satisfactory until the Committee was vested with power to deal with irregularities and improper conduct of members of the profession, in the same way as was the case in other learned professions'.² It was not until 1919 that this was achieved. By the Solicitors Act of that year the jurisdiction of the court, in respect of applications to strike off the roll, was transferred *in toto* to the Discipline Committee.³ The members of the Committee are still appointed by the Master of the Rolls, and rules made for regulating its procedure must receive his sanction. There is also an appeal to the High Court against any decision.

The position is not yet regarded with complete satisfaction. On the surface the jurisdiction of the Committee appears sufficiently wide. It has power to strike a solicitor off for any criminal offence, whether committed in connexion with his practice or not, and also for 'professional misconduct',⁴ by which is meant 'something which would be reasonably regarded as disgraceful and dishonourable by solicitors of good repute and competency'.⁵ The court, in considering appeals that have been brought, has made use of language which seems to give the Committee the same ample

¹ See judgement of Wills J. in *In re a Solicitor, ex parte the Law Society* [1894],

1 Q.B. 254, at pp. 256 and 257.

² Quoted from an historical summary in the Law Society's *Handbook* for 1924.

³ 9 & 10 Geo. V., c. 56, s. 5.

⁴ *Laws of England*, ed. Earl of Halsbury, 1st ed., vol. xxvi (1914), para. 1376.

⁵ *Ibid.*, quoting authority of *In re a Solicitor, ex parte the Law Society* [1912], 1 K.B. 302.

discretion as that enjoyed by the General Medical Council.¹ Yet in practice solicitors are seldom struck off save for very grave offences. Thus the G.M.C. punishes doctors for advertising, but the Discipline Committee has never punished a solicitor for advertising. This diffidence on the part of the Committee we can only attribute to the tradition it inherits, which is that of the court and not of an independent professional tribunal. Right up to 1919 the court alone had power to strike off; and it is only necessary to turn up the judgements of the Court, traditionally jealous of the rights of accused persons, to see how great was its reluctance to punish any but the most serious abuses. The ghost of that tradition appears to weigh even yet upon the spirit of the Discipline Committee.

The solution which commends itself to the profession is to compel every solicitor to belong to the Law Society, and so become subject to its domestic jurisdiction over its members. The Law Society is a chartered corporation of comparatively recent date, having been founded in 1825. Up to now membership has been voluntary, and has involved the payment of an annual subscription. This, it will be seen, differentiates it completely from both the Inns of Court and the Bar Council. Under the terms of the charter only solicitors are eligible, and any member whose name is struck off the roll automatically ceases to belong. On the other hand, exclusion from the Society does not, like exclusion from an Inn of Court, affect the right to practise. The Society is governed by a democratically chosen executive, and is altogether a more alert and active body than the Inns of Court and the Bar Council.

In spite of its voluntary character the Society has been entrusted under the Solicitors Acts with important educational duties which have already been considered. It undertakes other responsible public duties under the Poor Persons Rules, which will be considered hereafter.² In what may be called its private capacity, the Law Society pursues very similar activities to the Bar Council, and we need not recapitulate what was said about that body; but it does not follow the Bar Council in considering points of ethics and etiquette and publishing opinions thereon. This omission is the more extraordinary in view of the disappointment which has been expressed at the slow progress of the Discipline Committee in raising professional standards. It is the experience of professions where some unofficial body undertakes work of this kind, and notably of the Bar and the medical profession,³ that its pronounce-

¹ *In re a Solicitor, ex parte the Law Society* [1912], 1 K.B. 302; see also the emphatic judgements in *In re a Solicitor* (No. 2) (1924), 93 L.J.K.B. 761.

² See below, p. 482.

³ See below, p. 92.

ments assist, not only to raise standards by their direct moral appeal, but also to guide the policy of the statutory tribunal, although the latter is in no sense bound by them.

Nevertheless the mind of the profession appears set upon the project of compulsory membership. At the present time the Society embraces some two-thirds of the 15,000 solicitors holding practising certificates.¹ Indeed it is a testimony to the public spirit of solicitors that so many of them should voluntarily incur the obligations of membership. The Law Society takes little more interest in the problems of remuneration and status than the Bar Council. It supports the Civil Service Legal Society, and on occasion brings before the relevant committee any complaint or grievance regarding the scales of fees. But there is nothing in the nature of a continuous drive towards higher remuneration, and no attempt is made to prohibit one solicitor undercutting another—a practice which is believed to be not uncommon in certain parts of the country. London members have the use of an unusually complete law library and of the Society's luncheon rooms. Country members have not these inducements. Indeed their wants are already largely met by the provincial law societies numbering some eighty in all. These have independent constitutions and are in no sense branches of the Law Society. But the great majority are federated in an organization known as the Associated Provincial Law Societies, or in the Yorkshire Union of Law Societies, or both; and the Law Society makes it an invariable practice to consult these federal bodies before taking any important step affecting the interests of the profession.

At the same time the want of any organic connexion between the Law Society and the provincial law societies has undoubtedly proved a source of weakness, and it is here that we see possibilities of reform. In its early years the Law Society was almost wholly metropolitan in membership, and, it was alleged, in outlook. This led in 1847 to the formation of the Metropolitan and Provincial Law Association. There was no rivalry in point of policy between the Association and the Society; but the Association's executive was composed as to one half of country solicitors, and a feature was made of provincial meetings. The wastefulness of this duplication of societies having identical objects led eventually to their amalgamation. In 1872 the Law Society procured a new charter providing for the representation upon its executive (though never to the extent of one-half) of the provincial law societies; and in 1874 an

¹ Some of the Society's 10,000 odd members are presumably retired, and therefore no longer hold practising certificates.

annual provincial meeting was inaugurated, and the federal body before referred to, the Associated Provincial Law Societies, was set up with a view to keeping the local societies in touch with Chancery Lane. The amalgamation brought many country solicitors into the Law Society, and in 1889 their number overtook the number of London members. Indeed the Law Society's membership figures compare favourably with those of the local societies, even in respect of country solicitors, inasmuch as the Law Society includes three-fifths of all country solicitors, while the local societies do not, for the most part, claim to represent more than from 30 to 50 per cent. of the solicitors practising in their areas. The next step, we think, should not be compulsory membership, but a voluntary amalgamation scheme, which ought not to be difficult of accomplishment, bringing all the local societies into the Law Society and reconstituting them, as the provincial branches, with full local autonomy, of a single national body.¹

The arguments against compulsory membership are not to be lightly dismissed. There are two principal objections. In the first place Parliament is unlikely to give its sanction without such ample safeguards as would go far to destroy the purpose of the proposed scheme. It is the wide domestic jurisdiction of a voluntary association over its members which provides the main argument for compelling all solicitors to belong.² Yet, if membership were made compulsory, it may be taken as certain that Parliament would impose restrictions which would in effect circumscribe that jurisdiction. Indeed in the actual bill promoted by the Society itself in 1931 it was proposed to give power to the Master of the Rolls to disallow any rules which might be made for regulating the conduct of members. The second objection is perhaps more fatal. The Society would be likely to take on the character of an Inn of Court, to which its members would belong, not because they were in sympathy with its aims and activities, but because membership was an obligation inseparable from professional practice. There would be a serious danger of its becoming inert and ineffective, and we should deplore any alteration in the status of a body now performing valuable work which might have the effect of hampering its freedom and initiative.

To meet the particular difficulties which it is claimed that compulsory membership will solve, certain alternative suggestions

¹ At the same time opportunity could be taken to fill what is now a gap by setting up a London branch. Outside the limits of the City there is at present no organization of London solicitors as such.

² The Law Society is not a 'voluntary association' in the legal sense; it has a charter. What is meant is that membership is voluntary.

have already been made. So far as it is sought to make the Society more completely representative of the profession, it is suggested that this could be done, without introducing the element of compulsion, by a closer integration between the central and local bodies. So far as it is sought to raise ethical standards, much could be achieved by the Society alone if it were to undertake the codification of opinion upon matters of conduct. For the rest we look for reform in the constitution of the Discipline Committee on which the profession should be given direct representation. These, however, are points of detail. Proposals have been made from time to time for reforms of a much more far-reaching kind, affecting solicitors and barristers alike. In order that we may see these proposals in their proper setting it is necessary to undertake some inquiry into the history of the legal profession in both its branches.

The Origin of the Common Lawyers

THE most casual inquiry into the legal profession as it is organized to-day reveals institutions which are scarcely intelligible except against their historical background, and raises issues which it is not easy to discuss without some understanding of the way in which they have arisen. Indeed, even were this not so, institutions such as the Inns of Court are sufficiently unique for their story to be of interest in and for itself. Before coming to the discussion of outstanding problems, therefore, we endeavour to give some account of the way in which the organization of the profession has evolved.

This is a matter of no little difficulty. The history of the legal profession has not been written.¹ Its origins are exceedingly obscure; and, in the attempt to trace the course of its development in this country, continental analogies afford no guidance. In continental Europe the introduction of a settled system of law coincided with the rise of the universities. They were the medium through which the Civil Law and the Canon Law were diffused throughout the medieval world; and the Civilians and Canonists, who had graduated at the universities of medieval Europe, became the practitioners before its courts, both civil and ecclesiastical. In England, on the other hand, the jurisdiction of the ecclesiastical

¹ A valuable contribution to the history of the earliest and most obscure period has been made by Mr. H. J. Cohen in his *History of the English Bar and Attornatus to 1450* (1929); while the historians of English Law, Maitland, Sir Frederick Pollock, and Sir William Holdsworth, though they have not set out to write the history of the profession, have assembled a mass of information without which the following account could never have been written. Mr. E. B. V. Christian's *A Short History of Solicitors* (1896) is also useful.

courts was strictly confined, while the English civil courts, the Court of Admiralty alone excepted, resisted altogether the introduction of the Roman code. They proceeded instead to create and develop a native 'Common Law' out of indigenous Teutonic elements. But this Common Law, crude, unsystematized, and couched in a barbarian tongue, was wholly outside the range of subjects comprised in the medieval conception of learning. Consequently an alliance between the legal profession and the universities never came about in England, save in the relatively unimportant sphere of the ecclesiastical and admiralty courts.

The Commissioners appointed to inquire into the ecclesiastical courts reported in 1832 that only a Doctor of Laws of one of the English universities could be admitted to practise as an advocate before those courts¹—a rule stated to be at least as old as a canon of Archbishop Peckham (d. 1292), which laid down that 'no man from henceforth shall be admitted to exercise openly the office of advocacy without he have first heard the Canon Law and Civil Law at the least three years with good diligence'.² 'The fact of the advocates being the only members of the English Bar who were conversant with the civil law led to their being admitted by the judge of the Admiralty Court as advocates in that court, and to the Lord High Admiral of England selecting a civilian to preside as judge in the Admiralty Court and in the prize court in time of war.'³ But the 'advocates' and the system they stood for have since passed away. In the nineteenth century the Court of Admiralty became merged in the Supreme Court where barristers have sole right of audience, while the ecclesiastical courts were thrown open to members of the common law Bar. Moreover the 'advocates' were without influence upon the history of the common lawyers. Their organization in Doctors' Commons, dating from 1567, was a late growth to which the Inns of Court owe nothing. The subject therefore calls for no further mention here.

The native courts were thus left to make their own provision for the supply of such lawyers as their system might require. It is not possible to date with any precision the steps by which this was achieved. It is clear that in Saxon and Norman England litigation was conducted without the aid of lawyers, either to assist the parties or to adjudicate between them. 'The old procedure', we are told,

¹ See R. Burn, *Ecclesiastical Law*, 9th ed. (1842), vol. i, p. 5.

² G. Lyndewode, *Provinciale*, bk. i, tit. 16, ch. 2; a collection of canons of the English Church made in the fifteenth century, and reprinted (ed. J. V. Bullard and H. C. Bell) 1929 from an English translation of 1534.

³ *Laws of England*, ed. Earl of Halsbury, 1st ed., vol. xi (1910), para. 957 footnote.

'required of a litigant that he should appear before the court in his own person and conduct his own cause in his own words.'¹ But he might bring his friends into court with him and take 'counsel' with them before he spoke.² More often than not these 'friends' would be drawn from the ranks of the clergy, since educated persons were scarcely to be met with outside the Church. But during the reign of Henry II, 'we hear that the king has chosen five men, two clerks, and three laymen, who are not to depart from the king's court [as the barons were accustomed to do] but are to hear all the complaints of the kingdom. . . . It is probable that we have here a measure of great permanent importance. . . . We may say that before the end of the reign there is a permanent central tribunal of persons expert in the administration of justice'.³ Sometime during the century which followed the institution of this 'permanent central tribunal of persons expert in the administration of justice', the litigant, though still normally obliged to be present in court himself, established the right to have 'counsel', not merely of a friend who would prompt him, but of an 'expert' 'pleader' who would undertake for a fee to put his whole case to the court for him. 'It is from 1292 that we get our first Year Book, and we see that already the great litigation of the realm, the litigation which is worthy to be reported, is conducted by a small group of men. Lowther, Spigornel, Howard, Hertpol, King, Huntingdon, Heyham—one of them will be engaged in almost every case.'⁴

The pleaders of the thirteenth century were not organized in any institution. For reasons already given they did not become associated with the universities; for the same reasons any connexion with the Church was to be shortlived. However, a distinction which, whatever its origin, was to be of lasting importance, was already being drawn between those who were 'Serjeants' or *Servientes ad legem*, and those who were 'apprentices'. It has been suggested that the Serjeants were originally the 'Servants' or pleaders of the king⁵—in later times they were always appointed by

¹ Sir F. Pollock and F. W. Maitland, *History of English Law*, 2nd ed. (1898), vol. i, p. 211.

² See an article by Maitland in H. D. Traill and J. S. Mann, *Social England*, vol. ii (1902), p. 45.

³ Sir F. Pollock and F. W. Maitland, *History of English Law*, 2nd ed. (1898), vol. i, pp. 153 and 154.

⁴ *Ibid.*, pp. 216 and 217.

⁵ *Ibid.*, pp. 215 and 216. Against this view of the origin of the Serjeants, so far as it is made to rest on the mere derivation of the name, we have the very wide use of the term in the medieval period to mean advocate in a general sense. Thus the Common Serjeant seems originally to have been a kind of public prosecutor to the City of London; while in the fifteenth century, at all events, it was the practice, from among the general body of 'Serjeants-at-Law' to select a certain

royal writ¹—but that they had acquired the right to plead for private litigants as well. The ‘apprentices’, it is thought, may have originated as the ‘apprentices’ or pupils of the Serjeants. But, by the close of the thirteenth century, they had become a recognized though inferior order of practitioners. It was because they became identified with different courts that the ‘Serjeants’ and the ‘apprentices’ remained distinct. In the year 1215 it had been ordered that certain of the judges were no longer to follow the king’s person, but were to sit ‘in a certain place’ and hear all the pleas of the realm. This originated the Court of Common Pleas or ‘Common Bench’, which sat permanently at Westminster, and with which the Serjeants were peculiarly associated. Indeed it is thought possible that, already in the thirteenth century, they enjoyed before it something like exclusive audience. The remaining judges, constituting the King’s Bench, and hearing at that time only pleas which concerned the King or the breach of the King’s peace, continued to attend the King himself, and sat only as and when occasion demanded. Whether because the Serjeants were reluctant to forgo the advantages of attachment to a court which never moved out of London, or because of the relative unimportance of the King’s Bench at this epoch, or for some other reason not apparent from the evidence which survives, it was the ‘apprentices’ who were to become the practitioners before this second offshoot of the ancient *Curia Regis*.

The newly won right of the litigant to have counsel of a pleader did not excuse him from being present in court in person and assuming responsibility for what was said on his behalf; but, already in the thirteenth century, litigants were demanding the right to appear by deputy. This further right was not readily conceded. A primitive system of law, though willing to allow that a man might have counsel of his friends, even if his ‘friends’ were ‘experts’ and were paid for the counsel they gave, was not prepared to admit that he might put another man altogether in his place ‘to win or to lose’ in his plea.² The privilege of litigating by deputy is thought to have been originally the privilege of the king, who could not attend in person to all the suits instituted in his name. But what he could do himself, he could in certain circumstances

number, distinguished as ‘King’s Serjeants’, to act as advocates for the Crown. See A. Pulling, *Order of the Coif* (1897), pp. 41 ff.

¹ The earliest recorded instance of such a writ belongs to the year 1379; see *Pension Book of Gray’s Inn 1569–1669*, ed. R. J. Fletcher (1901), *Introd.*, p. x.

² See Sir W. Holdsworth, *History of English Law*, 3rd ed., vol. ii, 1923, pp. 311 and 312. See also an article by Maitland in H. D. Traill and J. S. Mann, *Social England* (1902), vol. ii, pp. 44 and 45.

grant a licence to others to do also. This was the position at the close of the thirteenth century.¹

The litigant's deputy was known as his 'attorney', in the original and unspecialized sense of that word still preserved to it in the term 'power of attorney'; that is, one who is 'atorné' or 'turned to' the business of another. Unlike the pleader, he was not, in the thirteenth century, an 'expert'. 'The attorneys of the period which is now before us do not . . . as yet constitute a closed professional class. Probably every "free and lawful person" may appear as the attorney of another; even a woman may be an attorney, and a wife may be her husband's attorney. A bishop will appoint one of his clerks, an abbot one of his monks, a baron will be represented by his steward or by one of his knights.' But—'occasionally . . . as we look down the list of attorneys, we see the same names repeating themselves, and draw the inference that there are some men who are holding themselves out as ready to represent whoever will employ them.'²

From the close of the thirteenth we pass to the early years of the fifteenth century. The obscurity of the intervening epoch is the more tantalizing, since it was then that the organization of the courts and of those who practised before them assumed the shape with which, in the main, we are still familiar. By the beginning of the fifteenth century the personnel of the judicial bench had become as 'expert' as it is to-day. The practice of drawing on ecclesiastics and lay administrators had definitely given place to a tradition of appointing only those who had made a successful career as pleaders. Subsequently this tradition hardened into a rule which required that all judges should have been Serjeants.³ As a natural consequence the law itself had become more 'expert', and also the procedure by which it was set in motion. This led to a complete transformation in the functions of the attorney, who himself became an 'expert', and assumed responsibility for all matters of routine involved in the preparation of the case. The

¹ Sir F. Pollock and F. W. Maitland, *History of English Law*, 2nd ed. (1898), vol. i, p. 213. See also Traill and Mann, loc. cit.

² Sir F. Pollock and F. W. Maitland, *History of English Law*, 2nd ed. (1898), vol. i, p. 213.

³ What is said here refers to the judges of the common law courts. The Chancellor was frequently not a lawyer at all until the end of the sixteenth century. Among the common law judges an exception was made in the case of the puisne Barons of the Exchequer, who were never required to be Serjeants. The general rule lasted until the Judicature Acts which laid down the present qualification, namely ten years' standing at the Bar. Long before that date, however, it had come to be only formally observed. As far back as the sixteenth century the Crown had adopted the practice of creating a barrister a Serjeant *pro forma* and immediately appointing him to the bench.

restrictions in the way of appointing attorneys were greatly relaxed;¹ and it ceased to be usual for the litigant to enter an appearance in person, or by a mere clerk or bailiff. Lastly there had been initiated, before the beginning of the fifteenth century, presumably by the judges, and of course independently of the universities and the Church, systems for organizing and controlling both the pleaders (below the rank of Serjeant) and the attorneys. To an investigation of those systems we now turn.

The Bar from the Fifteenth to the Eighteenth Century

The system of organization which was to become characteristic of the Bar did not disturb the distinction between the Serjeants and the 'apprentices'. Indeed it did not directly affect the Serjeants, who became a superior order of pleaders, appointed by the Crown, on the recommendation of the judges, from among the 'apprentices', and enjoying sole audience in the Court of Common Pleas. It may not be inappropriate at this point to carry their story to its final conclusion. Throughout the Middle Ages they remained a highly distinguished order; and they took rank, not with the 'apprentices', but with the judges, with whom they associated in the Serjeants' Inns. The expense of maintaining the dignity of their order was very heavy; and this may be held to account for their small numbers and for their failure to secure any substantial privileges outside the Court of Common Pleas. As the Exchequer, and later the Chancery, developed from administrative departments into courts of law, the 'apprentices' established the right to be heard before them.

The seventeenth century may be taken to mark the beginning of the decline of the Serjeants. Three causes contributed to bring it about: the success of the Courts of King's Bench and Exchequer in usurping much of the jurisdiction of the Common Pleas, the practice originating in the sixteenth century of, in effect, circumventing the rule which required all judges to have been Serjeants, and the rise in the seventeenth century of the new order of King's

¹ The process was a gradual one; in fact the old common law rule that a man 'ought to follow his suit in his own person' (*Coke upon Littleton*, p. 128 a, quoted in *Bebb v. The Law Society*, [1914] 1 Ch. 286) has never been formally abolished (see *Bebb v. The Law Society*, [1914] 1 Ch. 286). But, by a series of Acts extending from the reign of Henry III to that of Elizabeth, it became so overgrown with statutory exceptions that for all practical purposes it has ceased to exist. 'We can see survivals', remarks Professor Holdsworth (*History of English Law*, 3rd ed., vol. ii (1923), p. 317), 'of these old ideas in the rule that an infant not being competent to appoint an attorney must appear by guardian; and in the disability of an idiot to appear by attorney.'

Counsel, who, though appointed from among the 'apprentices', took rank above the Serjeants. With the coming of the reform movement in the early years of the nineteenth century, the restricted choice of counsel in the Court of Common Pleas came to be regarded as arbitrary and vexatious; and it was abolished by Parliament in 1846. When therefore the Judicature Act of 1873 substituted the modern qualification¹ for appointments to the judicial bench, the ancient 'Order of the Coif' ceased to have any *raison d'être*, and no further creations were made. The Serjeants' Inns were sold, and their property divided among the surviving members. The final extinction of the order came in 1921 with the death of Lord Lindley, who had been elevated to the bench just before the abolition of the old qualification.

It is from the 'apprentices' that the modern Bar traces its descent. Already at the beginning of the fifteenth century they are found organized in the Inns of Court. The minutes or Black Books of Lincoln's Inn go back to the year 1422. They disclose a society of lawyers with a settled constitution and regular activities, such as can only have grown up over a considerable period of time. Indeed in constitution and status no essential difference can be detected between the Lincoln's Inn of 1422 and the Lincoln's Inn of to-day. There are the same three classes of members, though they are known by other names. All are apparently referred to as 'apprentices'. Some are apprentices in the modern sense of being pupils or students, while others, distinguished as 'apprentices of the Court' and 'apprentices at law', have had conferred upon them the right to practise as pleaders. This right is conferred by the 'Ancients' or 'Readers', who constitute the governing body, and who already in the fifteenth century form a self-perpetuating oligarchy of the senior members of the Inn. But they acknowledge the suzerainty of the judges, a suzerainty which throughout the medieval period was very much more real than it has since become. One change has indeed taken place. Until the Judicature Act of 1873 the judges themselves were not members of the Inns; for they were Serjeants, and every Serjeant on appointment was forced to relinquish his membership.²

Yet of the origin of those institutions scarcely anything whatever is known. It is very disappointing that so little evidence should survive to show, not only how they came into being and how they acquired their peculiar form of constitution, but whence they

¹ Ten years' standing at the Bar.

² A puisne Baron of Exchequer, when not a Serjeant, continued to belong to his Inn.

derived their already undisputed right to qualify persons to act as pleaders in the common law courts.¹ It is clear that during the fourteenth century, not only the 'apprentices', but the Serjeants (including the judges), the attorneys, the Chancery Clerks and others employed about the courts and in administration, as well as the students in the universities, developed the habit of living together in hostels or lodging houses,² which became the centre of a certain corporate life, and in most cases undertook some educational functions. Of the Inns more peculiarly associated with the common lawyers, it is almost certain that none was in existence in 1292. In the fifteenth century there were a dozen or more. But four of them,³ the Inns of Court, were distinguished, and so far as can be seen were only distinguished, from the remainder, the Inns of Chancery, by possessing the power to confer on their members the right to be heard in court as pleaders.

The ceremony whereby this right was conferred took place in hall after supper. It was in some way connected with the arrangement of the hall and the *barrae* or forms upon which the members sat. There seems to be some doubt exactly how the *barrae* were arranged, but at all events the junior members sat 'within the bar', and the senior members 'without the bar'. From this it resulted that the students got the name of 'inner barristers', while the fully qualified apprentices became known as 'utter barristers', and the ceremony of promotion as the 'call to the bar'. The word 'barrister' first appears in the Black Books of Lincoln's Inn for 1454-5, and it came into common use in the sixteenth century. In the seventeenth century the qualifications 'inner' and 'utter' fell into desuetude; the 'utter barrister' became the 'barrister' *tout court*, and the 'inner barrister' became the 'student'.⁴

¹ 'From the first days of which we have knowledge they were in possession of the exclusive right of enabling a man to practise in the Courts at Westminster [the Common Pleas excepted].' *The Pension Book of Gray's Inn 1569-1669*, ed. R. J. Fletcher, 1901, Introd., p. xiv.

² Places, says Maitland, speaking of the common law Inns, designed to provide them 'with a common hall and common meals, and with chambers in which they can live cheaply, and for the time being celibately—they do not bring their wives to town'. F. W. Maitland, *Collected Papers* (1911), vol. iii, p. 82.

³ Or perhaps three. There seems to be some doubt whether the Inner and Middle Temple were at that time separate Inns.

⁴ Unfortunately the word 'bar' has another signification. It means the bar of the court—a line, now generally imaginary, drawn across the floor of the court so as to separate the bench and the front row of counsel's seats from the remainder of the court. It is the privilege of King's Counsel to sit within the bar (of the court). This gives rise to a modern distinction between the 'inner bar' (King's Counsel) and the 'outer bar' (junior barristers). But there is no connexion between this modern use of the terms 'inner bar' and 'outer bar' and the 'inner barrister' and 'utter barrister' of medieval times. A King's Counsel is said

The constitutional similarity between the Inns of Court in the fifteenth and in the twentieth centuries is sufficiently striking. There are, however, functional differences which are no less remarkable. In the fifteenth century the Inns were active educational institutions. They were in effect the residential colleges of a (purely legal) university, filling the gap left by the exclusion of the common law from any place among the studies pursued in the recognized seats of learning. The educational system evolved by them deserves some consideration. It was essentially a practical system;¹ and one of its more remarkable features was that it served to educate not only the students but also the practitioners themselves. There were 'readings', or lectures, followed by discussion, and 'moots', or sham lawsuits. Either a 'moot' or a 'reading' was held every night after supper during term time and during part of the vacation. At 'moots' during the term the benchers acted as judges, and the barristers argued the case, the students merely reciting the pleadings which they were required to have learnt by heart. During vacation barristers acted as judges and students argued the case. For the conduct of 'readings' a barrister was appointed to act as 'Reader', and the appointment also operated as a call to the bench. Indeed no barrister was ever called to the bench who was not prepared to perform the duties of a Reader,² and thus a certain standard of ability among those who constituted the governing body of a medieval Inn of Court was assured. It was the duty of the Reader to expound the text of a statute and to offer an interpretation of all doubtful points of law arising under it. At the conclusion of the 'reading' it fell to the students to contest the interpretation, and for the Reader then to defend it. After the introduction of printing many readings were published and became famous law-books.

Nevertheless the introduction of printed law-books was among the factors that were instrumental in bringing about the decay of the system, since they made the student less dependent on moots and readings as a source of instruction. But political factors were perhaps of greater importance. During the civil wars, when the members of the Inns were scattered, all exercises were abandoned; and, in spite of a few half-hearted attempts, they were never after-

to be 'called within the bar' (that is, the bar of the court). But this is not the bar to which a student is called. He is called neither to the bar of the court, nor as is sometimes loosely said to the bar of England, but to the bar of his Inn.

¹ The account here given is substantially an account of the system at the period of its fullest development, namely in the sixteenth century.

² Sir W. Holdsworth, *History of English Law*, 3rd ed., vol. vi (1924), p. 479.

wards revived. This, it seems, is to be attributed largely to direct political interference. The sixteenth and seventeenth centuries mark the beginning of that close association with politics which has ever since characterized the English Bar and fixed the ambition of its more successful members. Early in the seventeenth century the Crown began the practice of appointing King's Counsel. Francis Bacon was the first holder of this dignity; and the appointments, which at that time carried a salary, were intended to reward not forensic ability but political services. At the same time pressure was brought to bear upon the Inns to induce them to call to the bench these recipients of the royal favour. In 1668 the judges decided that a King's Counsel had a right on appointment to be called to the bench of this Inn—a decision which was not formally reversed until 1845. So the benches 'ceased to be composed solely of the able men of the junior bar, who had won their way thither, partly by their abilities in the courts, and partly by their willingness to take an important part as Readers in the educational work of the Inns';¹ and a 'new school of benchers' arose, 'ready enough to suppress the collegiate life of the Inns, by acquiescing in the breach of the rules which required all students to reside there during term and during some parts of the Vacation'.²

During the eighteenth century the Inns fell into that condition of torpor and lethargy which then overcame so many once liberal institutions. 'It is now usual', said Master Worsley in 1734, 'that when a gentleman hath failed, and been fined for so doing, to account his exercise over, he being no more called to that exercise. But formerly such fine was only lookt upon as a punishment for the neglect, and did not excuse the performance of the exercise.'³ To get over the obligation of residence a complicated legal fiction was invoked. The tenant of certain chambers agreed to surrender them to the student, who gave a bond to re-surrender in three years. The student was then formally admitted on the terms of the bond. The whole transaction cost £8 4s.⁴ At the Middle Temple all the obligations of the student could be compounded for £38 6s. 2d., this being the total sum due in fines, where 'a gentleman forfeits his vacations, keeps not his terms, and fails in the performance of his exercises'.⁵

¹ Sir W. Holdsworth, *History of English Law*, 3rd ed., vol. vi (1924), p. 480.

² *Ibid.*, p. 493.

³ *Ibid.*, p. 489, quoting *Master Worsley's Book* (1734), p. 136.

⁴ *Ibid.*, quoting *Master Worsley's Book*, pp. 210 and 211.

⁵ *Ibid.*, quoting *Master Worsley's Book*, p. 212.

*Attorneys and Solicitors from the Fifteenth to the
Eighteenth Century*

In the organization of the Bar in the Inns of Court we have seen a picture of medieval institutions at their best. By a curious contrast the system evolved during the fourteenth and subsequent centuries for the regulation of attorneys shows them at their worst. No satisfactory system of training was ever worked out, and trifling distinctions of function were made the basis of formidable occupational barriers whose passage was a matter of the utmost difficulty, and whose final abolition has only been accomplished in very recent times.

The attorneys never became organized in any kind of gild. Many of them belonged to one of the Inns of Chancery;¹ but, although in medieval times these lesser Inns provided some instruction for their members in the form of readings and lectures, they were never made responsible for the education or discipline of attorneys.² It had become the function of the attorney to set the machinery of the court in motion on behalf of his client, and at a time when the idea of agency was still unfamiliar there seems to have been a reluctance to allow that machinery to be operated by one who was not himself virtually a part of the machinery. So the attorney became an 'officer of the court', which assumed direct responsibility for his fitness and good conduct. But, though the court could punish those who were its officers and limit their freedom in a number of ways, it had no facilities for educating them or for testing their fitness to perform their duties. Parliament complained of the 'great number of attorneys ignorant and not learned in the law', and enacted that the judges should 'examine' all candidates;³ but, in the absence of any examination technique such as we have since evolved, and when an 'examination' meant no more than a formal interview, effective elimination of the incompetent was not possible by this method. Consequently the complaints continued.

The policy of regulating the attorneys through the courts and not through the Inns had other important consequences, inasmuch as there came to be superimposed upon the inevitable functional

¹ So called because they were more particularly associated with the clerks in the office of the Chancery.

² The Inns of Chancery to some extent acted as preparatory schools for the Inns of Court. At the end of each term one or two of the most promising students would be promoted to membership of one of the superior Inns. Some of the Inns of Chancery acknowledged a sort of vague suzerainty on the part of one or other of the Inns of Court. Having no responsible duties, the Inns of Chancery suffered a decline at once more rapid and more complete than the Inns of Court.

³ 4 Hen. IV, c. 18.

distinction between pleader and attorney a professional distinction which was not inevitable, and which in fact did not become sharply defined at all rapidly. In the fifteenth century, though there was already a functional distinction, there was no complete professional separation, for there was nothing to prevent an attorney becoming a member of an Inn of Court and eventually being called to the Bar. In the sixteenth and seventeenth centuries, however, the Inns, aided by the judges and actuated, it seems, by motives of pure exclusiveness,¹ embarked upon the deliberate policy of refusing admission to attorneys.² Had the Inns been made responsible for the education of attorneys, this would hardly have been possible. Indeed, though the functional distinction between the advocate and the law agent would doubtless have persisted, the professional separation with which we are now so familiar might never have arisen, and there might have been, not two gates to two professions, but one gate to one profession, some of whose members would specialize in advocacy.

The system of regulating the attorneys through the courts not only facilitated the separation between the two 'branches' of the profession, it also created a number of artificial distinctions between the attorneys themselves. Each court had its own staff of attorneys, admitted to a roll kept by the judges of that court, and subject only to their control. In the absence of any gild with responsible duties there was nothing to bring the attorneys together, and their attachment was to one or other of the courts rather than to their profession as a whole. Moreover, the policy of the judges was calculated to perpetuate and intensify these distinctions. With the failure of attempts to remedy their 'ignorance', attention came to be concentrated more and more on the 'great number' of attorneys, and there began a long period of rules, regulations, and ordinances, during which restriction was piled upon restriction with ever-increasing severity. As an 'officer of the court' the attorney was debarred from acting for his client in any matter not connected with actual legal proceedings.³ He was forbidden to

¹ See the order of the judges, dated 1614, quoted by Professor Holdsworth (*History of English Law*, 3rd ed., vol. vi (1924), p. 440), which recites that 'there ought always to be preserved a difference between a counsellor at law, which is the principal person next unto the serjeants and judges in the administration of justice, and attorneys and solicitors which are but ministerial persons and of an inferior nature'.

² So far as is known the Inns of Court did not begin to exclude attorneys before 1556, while it was not until the eighteenth century that their efforts were entirely successful; see Sir W. Holdsworth, *op. cit.*, 3rd ed., vol. vi (1924), pp. 441 and 442.

³ 'He [the attorney of the fifteenth century] was his client's agent for all purposes connected with a particular piece of litigation, at a time when the idea

practise in any court except that to which he had been admitted.¹ It was sought to prevent any attorney from being admitted to more than one court at a time, and to fix a maximum number of attorneys for each court.² It was not always easy to secure the observance of these rules, and in the common law courts some of them were never strictly adhered to. With the rise of new courts in the Tudor epoch, however, it was possible to start afresh, and the accepted policy was pushed to absurd limits. In the Court of Star Chamber the number of attorneys was fixed at two—one for the plaintiff and one for the defendant; though as a concession a third was afterwards added. In the Court of Chancery the number of attorneys was limited to six, known as the Six Clerks. Since they were unable to attend to all the business, the Six Clerks were driven to appoint other clerks to assist them, and the position of the assistant clerks had eventually to be recognized; but their number was limited to sixty.

The policy of restriction failed to check the 'multitudes and misdemeanours' of attorneys.³ Moreover, the enforced specialization it implied, besides impeding the growth of professional consciousness, was a source of trouble and annoyance to litigants, with the result that those who could afford it were driven to employ persons as their servants to take charge of all their legal business. These private lawyers, the retainers of great men, acquired the name of 'solicitors'.⁴ Almost the earliest solicitor of whom record has come down to us is the Solicitor-General to Edward IV, who, on the 12th March in the first year of his reign,⁵ appointed one Richard Fowler to be his solicitor 'in all matters pleas suits and quarrels affecting us within our realm of England'.⁶ The King's example was quickly followed. The solicitor of this period, attached to the retinue of a great household, was not restricted like the attorney in what he could do for his client; for he was the

of agency was not familiar. Hence his authority came to be confined strictly to the preparation for the particular piece of litigation in hand, and to the litigation itself.' Sir W. Holdsworth, *History of English Law*, 3rd ed., vol. vi (1924), pp. 450 and 451.

¹ See Order of the Court of Common Pleas, dated 1564, and set out in E. B. V. Christian, *A Short History of Solicitors* (1896), pp. 38 and 39.

² Thus 'in 1616 an order was made at a meeting of all the Judges that the number of attorneys in each court be viewed and drawn to a competent number; the superfluous ones were to be removed.' Christian, *op. cit.*, p. 80. See also the measures recommended to be taken in 1573 when the court inquired into the 'excessive and unprofitable number of attorneys'; *ibid.*, p. 41.

³ See an Act of 1605, 3 Jac. I, c. 7.

⁴ Because it was their business to 'urge' their masters' causes, and 'rouse' attorneys and others to activity on their masters' behalf.

⁵ Presumably 1461.

⁶ Sir W. Holdsworth, *History of English Law*, 3rd ed., vol. vi (1924), p. 462.

'servant' of his master and as such could bind him while acting in the course of his duty. For certain purposes connected with actual litigation he might have to employ an attorney of the court where the litigation was proceeding;¹ but, subject to this qualification, he could follow his master's business wherever it took him. He was not a member of the 'legal profession', and in this he resembled the earliest attorneys; but, as the clerk, the bailiff, and the steward gave way before the 'common attorney', so in course of time the 'common solicitor' came to supersede the private salaried solicitor of a single individual. It was this development, the appearance of a new class of practitioners alongside the attorneys, which was to lead eventually to the break-down of the policy of restriction.

The appearance of the 'common solicitor' was due to the rise of those new courts, to which reference has already been made, and whose policy was an intensification, in the supposed interests of the suitors, of the restrictive methods of the common law courts. The effect of the policy was the reverse of what was intended. In the Court of Chancery, we are told, 'personal attention by the six attorneys of the court to the suitors' interests was impossible.'² Even the Sixty had to appoint other clerks subordinate to them; and 'all were eager for fees'.³ 'In such conditions it was inevitable that a class of men should grow up whose business and care it was to conduct, expedite, and "solicit" causes.'⁴

An irregular class of practitioners, unknown to the law, unorganized and subject to no discipline or control, the solicitors were not easily absorbed into the ranks of the legal profession. In some cases the solicitor was already an attorney; for many attorneys acted as solicitors to their clients in business coming before the prerogative courts, and in common law courts other than their own, though in so doing they had no legal status and were not subject to the control either of their own court or of the court in which they were 'soliciting'. Other solicitors were not attorneys at all; and they were bitterly resented by members of the profession. William Hudson, a barrister practising before the Court of Star Chamber, expressed what was no doubt, in or before 1635 when he wrote,⁵ the orthodox view. 'In our age,' he lamented, 'there are stepped up a new sort of people called *solicitors*, unknown to the records of the law, who, like the grasshoppers in Egypt, devour the whole land; these I dare say were express maintainers and could not justify

¹ In much the same sort of way as a solicitor now briefs counsel.

² E. B. V. Christian, *A Short History of Solicitors* (1896), p. 72.

³ *Ibid.*, p. 72.

⁴ *Ibid.*, p. 73.

⁵ He died in that year leaving a manuscript 'Treatise of the Court of Star Chamber'.

their maintenance upon any action brought. I mean not where a lord or gentleman employed his servant to solicit his cause, for he may justify his doing thereof; but I mean those which are common solicitors of causes, and set up a new profession, not being allowed in any court, or at least not in this court where they follow causes. And these are the retainers of causes and devourers of men's estates by contention and prolonging suits to make them without end.'¹

However, the confusion was so great that sectional jealousy could not indefinitely obstruct reform; and during the seventeenth century the first steps began to be taken towards fusing the various classes of practitioners and towards the inauguration of a new policy of control. Restriction of numbers, which in the common law courts had never been carried to the same lengths, was silently abandoned in those courts before the close of the century. In the Court of Chancery the same result was arrived at, not by increasing the number of those who were strictly attorneys of the court, but by recognizing the solicitors as the real agents of the suitors, and allowing the Six and the Sixty to become mere sinecurists and 'one of those almost useless pieces of antiquated machinery, which did so much to make the procedure of the court a grievous burden in the eighteenth century'.² Concurrently with these changes the judges began to require of candidates for admission that they should show some evidence of qualification. The qualification demanded was not a period of training in an institution, such as was demanded of the medieval 'apprentice', and such as might have been demanded of the medieval attorney. The decay of the Inns of Chancery and the exclusiveness of the Inns of Court made that impossible. What was done was to require of candidates that they should have been engaged for a specified period in some occupation in or about the court which would ensure that they had received some practical training. A start was made in the year 1633 when it was ordered by the Court of Common Pleas that no one should be admitted an attorney of that court who had not served for six years as an attorney's clerk or in some other approved capacity.³ During the Commonwealth a number of experiments were tried in the reform of legal procedure, the majority of which

¹ Quoted E. B. V. Christian, *A Short History of Solicitors* (1896), pp. 74 and 75. See also C. G. Cook, *English Law* (1651), p. 44, quoted by Sir W. Holdsworth, *History of English Law*, 3rd ed., vol. vi (1924), p. 452 n.: 'And in these last times there sprang up, first under the wings of noblemen, and men of great estate, . . . a creature called a solicitor; these men rob both lawyers and attorneys and all subjects.'

² Sir W. Holdsworth, *History of English Law*, 3rd ed., vol. vi (1924), p. 455.

³ E. B. V. Christian, *A Short History of Solicitors* (1896), p. 80.

did not survive the Restoration. But a rule was made in 1654 by the 'Supreme Court of Westminster', which 'ordained that none should be admitted an attorney unless he had served five years as a clerk to some Judge, Serjeant-at-Law, Barrister, Attorney, Clerk or other officer of the Court';¹ and in the subsequent period this rule was substantially re-enacted, with the important additional option of five years' service as a solicitor.²

It is doubtful how strictly these rules were observed; but early in the eighteenth century the new policy of insistence on qualification and the abandonment of restrictive measures received the endorsement of Parliament, when, in 1729, it embarked on its first serious effort to bring order out of chaos. Previous attempts at parliamentary intervention—the result, it seems, in every instance of misplaced alarm at the 'great number' of attorneys—had been entirely ineffective, since they had never got beyond vague exhortations to the judges to show more vigour in the execution of their own restrictive policy.³ The Act of 1729,⁴ on the other hand, formed, with amending Acts passed in 1749⁵ and 1750,⁶ a constructive piece of legislation whose main provisions have been re-enacted and survive to this day.

The effect of these Acts was to enable an attorney of any common law court to be admitted on application an attorney of any other common law court or a solicitor of the Court of Chancery, and at the same time to enable a solicitor to be admitted an attorney of any common law court; while to prevent the rise of any new class of irregular practitioners heavy penalties were imposed on persons acting, or enabling others to act, as attorneys or solicitors in courts to which they had not been admitted. The common form clause requiring all candidates to be 'examined' was not omitted from the Act of 1729, but the 'examination' remained as perfunctory as before, and another century was to elapse before there was imposed an examination test as we understand that term. But the Act introduced an important reform by inaugurating the modern system of practical training. Mere service as clerk to a judge, barrister, or attorney was no longer to qualify. Henceforward every candidate for admission was to be 'articled' to an attorney or solicitor, as the case might be, for a period of five years. All articles were to be registered and an affidavit produced to the

¹ E. B. V. Christian, *A Short History of Solicitors* (1896), pp. 80 and 81.

² Sir William Holdsworth, *History of English Law*, 3rd ed., vol. vi (1924), p. 436.

³ Acts were passed in 1405 (4 Hen. IV, c. 18), 1455 (33 Hen. VI, c. 7), and 1605 (3 Jac. I, c. 7).

⁴ 2 Geo. II, c. 23.

⁵ 22 Geo. II, c. 46.

⁶ 23 Geo. II, c. 26.

judge of due completion of the period of service. Evasion was thus rendered impossible.

The importance of this legislation was very great. Admittedly it did not effect a formal amalgamation between attorneys and solicitors. It was not until 1843 that the several rolls of the several courts were combined to form a single roll, admission to which gave the right to practise in any court; and it was not until the Judicature Act of 1873, which merged both the common law courts and the Court of Chancery in a single Supreme Court, that the distinction between attorneys and solicitors was lost, and the title 'attorney' formally abolished. However, the effectual amalgamation dates from the Act of 1729. That Act created a single profession, whose members, as at once 'attorneys-at-law' and 'solicitors-in-equity', could act as agents for their clients in any litigation in any court. It is not without significance that within ten years of the passing of the Act we begin to hear, for the first time in this branch of the legal profession, of a true professional association.

The Era of Reform

The reform movement of the nineteenth century, which so greatly changed the substantive law and completely remodelled the courts, did not leave the legal profession untouched. Utilitarian opinion, however, though interested in reform of the law, was only interested in professional reform in so far as it was bound up with educational reform. Professional opinion, on the other hand, showed itself apathetic to educational reform, except where the movement for reform became linked up with the movement for self-government and improved professional status. Such reform as there was, therefore, coming partly from within the profession—indeed from within one branch of the profession—and partly from outside, was haphazard and incomplete.

The Act of 1729, though it swept away much that was antiquated in their organization, did not make attorneys and solicitors a self-governing profession; nor did it raise their status to an equality with that of the Bar. It did, however, give them a professional consciousness, and thus indirectly foster the movement for self-government. Shortly after the passing of the Act a number of practitioners came together to found a voluntary association under the title of 'The Society of Gentlemen Practisers in the Courts of Law and Equity'. Known from the beginning as the 'Law Society', it was the direct progenitor of the present chartered body of that name. Its records go back to the year 1739; and 'I think it is clear',

says their editor,¹ 'that the Society had then an existence, a name, and sufficient organization to have a Steward'.

In 1741 it was 'ordered that the Committee should meet as often as they thought proper, and take into consideration any matters relating to the benefit of suitors, and the honour of the profession.'² The Society concerned itself with every sort of matter affecting the profession;³ with the removal from the rolls of solicitors who had been guilty of misconduct, with the procedure of the courts and the administration of justice, with the terms of admission to the Bar of persons who had been attorneys, with the scale of costs, and with proposals for the foundation of a college for the education and examination of articled clerks.

The minutes of the Society appear to be wanting for the years 1794 and 1795 when the project of a 'Royal College of Attornies-at-Law and Solicitors' was under discussion.⁴ It is not, therefore, possible to say how far the Society supported that project, though it certainly arose from within the profession.⁵ Outside the profession considerable support was secured, and a Bill which it was proposed to introduce appeared to stand a fair chance of becoming law. All candidates for admission were to be examined, and the College was to be empowered to make by-laws 'for regulating fair practice'.⁶ However, a difference of opinion arose upon the relative merits of incorporation by Act of Parliament and by Royal Charter; and this led to the whole scheme being abandoned. Nevertheless it is fair to regard it as the beginning of that movement which during the following century was to make solicitors persons of education and to give them some measure of control over their own affairs.

Nothing further was attempted for more than a generation. In the intervening period the Society of Gentlemen Practisers had given place to the Law Society. The exact steps which led to the winding up of the old Society and the inauguration of the new cannot apparently now be ascertained; but the new Society dates its foundation from a meeting held on the 2nd June 1825. Its original

¹ *The Records of the Society of Gentlemen Practisers in the Courts of Law and Equity*, ed. E. Freshfield (1897), *Introd.*, p. iii.

² *Ibid.*, p. 5.

³ *Ibid.*, *passim*, particularly pp. 155 foll., where the Society is seen in search of a method of 'lessening the delays and expenses' of proceedings in the Court of Chancery; see also *Introd.*, pp. ciii foll., where vigorous and ultimately successful (see E. B. V. Christian, *A Short History of Solicitors* (1896), pp. 219 and 220) efforts are recorded as having been made to restrict certain counsel to certain courts, and so diminish the risk of their not appearing at a trial for which they had been briefed.

⁴ See *The Records of the Society of Gentlemen Practisers* (1897), pp. 162 and 163.

⁵ E. B. V. Christian, *A Short History of Solicitors* (1896), p. 170.

⁶ *The Records of the Society of Gentlemen Practisers* (1897), p. 312.

title was 'The Society of Attorneys, Solicitors, Proctors¹ and others not being Barristers, practising in the Courts of Law and Equity in the United Kingdom'. It afterwards became 'The Incorporated Law Society', and then simply 'The Law Society', by which name it has always been known. In 1845 it was incorporated by Royal Charter,² and its purposes were then stated to consist in 'promoting professional improvement and facilitating the acquisition of professional knowledge'.³ In function as well as in name, therefore, it carries on the tradition of the Society of Gentlemen Practisers. But as a much larger body, coming into existence when the reform movement was at its height, its influence and its achievements have been correspondingly greater.

It was principally towards the second of its two objects that the Society's energies were first directed. At a later date concern for 'professional improvement' led to a demand for self-government in matters of discipline. In that field, however, no substantial advance was won before 1888; and the remainder of the story is so recent that it has been noticed in our account of the profession at the present day. Towards 'facilitating the acquisition of legal knowledge' a beginning was made in 1833 with the institution of lectures. Very shortly afterwards negotiations were entered into with the judges with a view to the substitution of a compulsory written examination for the purely formal interview which had hitherto been held to satisfy the requirements of the Act of 1729. In 1836 the judges of the common law courts agreed to make rules requiring all candidates for admission as attorneys to pass a written examination in common law. In the following year the Master of the Rolls, with whom the matter rested, made similar provision for the examination in equity of solicitors. From the start representatives of the Society sat on the common law examining body; and in 1846 representation was secured on the examining authority for solicitors also. In 1853 the two sets of examinations were consolidated. Finally in 1877 half a century of effort received its reward, and the

¹ The 'proctors' were the agents of the parties in the ecclesiastical and Admiralty courts. There is little to be said about them. They were not required to be Doctors of Law like the 'advocates'. In later times training under articles became the rule, under Acts which were clearly modelled on the solicitors' Acts of 1729 and the following years. Solicitors themselves are now admitted to practise in the ecclesiastical courts.

² An earlier charter of 1831 was surrendered when the new charter was granted.

³ *Charter of the Society of Attorneys, Solicitors, Proctors, and others not being Barristers, practising in the Courts of Law and Equity of the United Kingdom*, 1845, preamble. The Law Society's *Handbook* contains a transcript of the charter and supplementary charters, and of the Solicitors Acts. We are also indebted to it for a useful historical summary of the period subsequent to 1825.

Society was given the 'entire management and control'¹ of all the examinations.

At the Bar it was otherwise. With the breakdown of the medieval system of moots and readings, compulsory training was abandoned, and even the nineteenth century saw no movement for its revival. It was felt that the keen competition at the Bar, combined with other circumstances, was such as to make it impossible for the incompetent to establish themselves in practice. So the student was left to himself to learn the principles of the law out of textbooks, and its practice from attendance in court. Until the courts were removed to the Strand in 1882 a special box was always provided for the students, and it is recorded of Lord Mansfield that he used to turn aside and explain for their benefit all points of interest that arose in any case he tried. From the end of the seventeenth century those who seriously intended to make a career at the Bar adopted the practice of reading in an attorney's office, or in the chambers of a barrister or special pleader,² or both—a practice which depended for its success on the initiative of the student and the trouble or interest taken by the attorney or special pleader.

In this system—or want of system—no material change had been made when, in the middle of the nineteenth century, the great wave of public interest in reform began to make itself felt in the sphere of legal education.³ In 1846 the House of Commons appointed a select committee to inquire into the state of legal education; and this was followed in 1854 by a Royal Commission on the Inns of Court and Chancery. The discussion at that time revolved round three points: (1) the education of Bar students and articled clerks in its technical aspect, (2) the academic study of law, (3) a proposal to set up a school of law or specifically legal university in London.

The committee of 1846 did not criticize the system of legal education in its technical aspects. What they deplored was the absence in both branches of the profession of any provision for education in the science of law or in the legal systems of other nations, and, in the case of solicitors at all events, of any preliminary test of general education.⁴ Their report was not without its effect.

¹ 40 & 41 Vic., c. 25, s. 6.

² The 'special pleaders' were members of an Inn of Court who had not been called to the bar. Consequently they were not entitled to be heard in court, and their practice was limited to drafting pleadings and other documents. The custom of practising as a special pleader is now extinct.

³ In 1844 a tentative experiment with voluntary examinations was made by the Inns of Court.

⁴ The committee found that the 'moral and intellectual education' of attorneys was 'very inferior'. Quoted E. B. V. Christian, *A Short History of Solicitors* (1896), p. 187.

The Law Society secured the passage of the Solicitors Act of 1860 setting up a preliminary examination in general knowledge; while the Inns of Court, which had already experimented with examinations two years before the committee was appointed, now added to their number, and gave a prominent place to the academic subjects of jurisprudence and Roman law. The student, however, was allowed the choice of taking the examinations or attending a course of lectures; and the great majority elected to attend the lectures. It was not until 1872 that this option was abolished and compulsory examinations were instituted. Unfortunately jurisprudence has since ceased to figure in the syllabus, and the lectures remain voluntary; while comparative law has never been set as a subject either for barristers or for solicitors.

In 1854 public interest in the project of a legal university led to the appointment of the Royal Commission before mentioned. The Commissioners were directed to inquire into the financial situation of the Inns of Court and Chancery, and in particular to ascertain whether their funds were subject to any sort of educational trust. They reported that the Inns of Chancery were completely decayed, having degenerated into mere dining clubs, but that they were not rich societies and that no trust could be traced affecting their property. The Inns of Court, on the other hand, were found to possess varying but upon the whole considerable resources. In the case of Lincoln's Inn and Gray's Inn it could not be shown that their property was affected by any trust. In the case of the Inner and Middle Temple, however, it appeared that the land upon which they stood had been granted to them by the Crown in the reign of James I,¹ and that in the grant they were spoken of as 'seats of learning'. This was held by the Commission to constitute a trust. However, it seems that all four Inns were by that time spending considerable sums in payment of salaries to lecturers and for other educational purposes, and no misappropriation of their funds was disclosed. The Commissioners therefore made no recommendation beyond suggesting that they thought the Inns might suitably be incorporated as the colleges of a legal university with power to grant degrees in law.

This idea of a legal university was widely canvassed for many years. It found more favour among solicitors than at the Bar; for they felt that, if Bar students and articled clerks had to take the same course of study in the same institution, it would tend to put both branches of the profession upon an equality; if indeed it did not result in complete fusion between them. In or about 1869 a

¹ Up to that time they had only leased it.

of litigation; and there unquestionably exists a widespread belief that all attempts at reform are obstructed by the legal profession.

It does not fall to us here to consider what specific reforms are desirable either in the substantive law or in legal procedure; but we are entitled to consider the attitude taken up by the profession towards proposals for reform. Lawyers are not antagonistic to law reform as such. The difficulty arises because the reforms they would like to see are not those the public wants. The profession inherits a proud tradition. It is their boast that English justice is the most perfect in the world, and they look upon themselves as the trustees of an inheritance which it is their first duty to cherish and to hand on unincumbered to future generations. Reforms which are calculated to make the system more perfect will receive their sympathy and support; but they are jealous of any innovation which in any way threatens its technical perfection. This explains both their desire to see the individual who has been wronged by a servant of the Crown put upon the same footing as an individual who has been wronged by the servant of a subject, and also their dislike of the settlement of certain classes of dispute by departmental tribunals. That the system is one which the community has in any sense outgrown, or can no longer afford, or that some system of administrative justice—though assuredly not the present system—is both necessary and inevitable, is a point of view which has simply not presented itself to them.

Recent public discussion has been directed principally to procedural reform, and it would hardly be an exaggeration to say that the whole of English procedure is based on an assumption which is completely out of date. Existing procedure assumes a fundamental *mala fides* in the parties to all private disputes. The assumption is exemplified in the elaborate and costly methods of fact-finding which are characteristic of English justice. There are admittedly cases in which the precautions of English procedure are salutary—when a man is charged with murder or is unlawfully imprisoned, or, even in an action on a contract, when fraud is alleged. But these considerations do not apply to the bulk of ordinary litigation, nor to the average commercial action where the complaint is loudest. 'My decided opinion is, as I have often remarked to you, on several occasions, that the English procedure, excellent though it may be, is too dear, and that in England constitutes an "article de luxe".'¹ The point which the legal profession fail to appreciate is that the

¹ Translation of a letter from Maître Léopold Dor of Paris to the London Chamber of Commerce, printed as Annex 2 (p. 13) to the Report of the London Chamber of Commerce Sub-Committee on the Expense of Litigation (1930). We are indebted to the Chamber for allowing us to see a copy of the Report.

public would be prepared to sacrifice some of the 'excellence' of English procedure in return for greater cheapness, and to this extent they undoubtedly offer a real obstacle to procedural reform. Public criticism has not been confined to matters of procedure. It is felt that the substantive law is unnecessarily complicated and obscure, but that again the profession is content to let things go on as they are. Here again the cleavage follows the same lines. The public demands simplicity and intelligibility, even at some sacrifice of 'excellence', while the profession adopts the role of defender of a system whose long development is evidence of its perfection.

A consideration of the attitude of lawyers towards the institutions which form the subject of their technique suggests that their belief in the perfection of the existing system and their apathy towards reform are in large measure attributable to a system of legal education which does nothing to widen their vision or to encourage an interest in the study of their craft. It is noteworthy that, when judged by the interest they show in the study of their own technique and its improvement in the public interest, barristers and solicitors occupy a low place among the professions. We do not forget that two lawyers never meet without 'talking shop'; nor do we forget the few admirable, but only too inadequately supported, study associations, among which the Selden Society is outstanding, which have made such great contributions to legal learning. The support which they receive, however, is meagre, while their activities are directed mainly along academic and historical lines. Neither the Inns of Court, nor the Bar Council, nor the Law Society have any study activities; and there is only one other profession of which such a statement could be made. The Bar Council and the Law Society give attention to matters of detail and procedure, and close touch is maintained between the Society and the Lord Chancellor's Department; yet most of the great law reforms of the last hundred years have been the work, not of the legal profession or of any organized group within it, but of a few public-spirited lawyers, supported by informed lay opinion. The solicitors gave continuous support to many of the property law reforms; but against this is to be set their extraordinary antagonism to land registration. This antagonism is attributed by the public to professional cupidity—loath to surrender the lucrative monopoly of investigating titles. We believe these charges have very little foundation. The dislike of land registration springs from a genuine, if erroneous, belief that titles will not in the end prove secure, and that any saving in expense will be quite incommensurate with the risk involved. It is but another instance of the

characteristic conservatism of lawyers—a conservatism which is not so much self-interested as ill-informed.

While it is outside the scope of this work to consider specific proposals for law reform, it is necessary to refer to one proposal which has been much canvassed, since it intimately concerns the organization of the profession. This is the 'fusion' of its two branches. 'Fusion' is supported by the public because it is thought that it will free them from the necessity of employing two lawyers. It is also supported by many solicitors in the belief that it will remove the stigma which they feel still clings to their branch of the profession. Nevertheless it is doubtful if what is generally understood by this term—the formation of a single class of legal practitioners authorized to perform all the functions now reserved to barristers alone or to solicitors alone—would be valuable. So far as the public are concerned, there are sound arguments for extending the jurisdiction of those inferior courts where solicitors have concurrent right of audience with counsel, thus relieving the litigant who cannot afford it of the necessity of paying for the services of two lawyers. There are also arguments for simplifying in the High Court the machinery for proving matters of fact, so that many cases which now come into court could be settled by the judge in chambers. Nevertheless the superior mode of trial offered in the High Court, which no one proposes to do away with entirely, depends for its success upon the employment of a specialist for the actual presentation of the case. Such specialists are to be found, so it is understood, even in countries where the two 'branches' are in fact fused. Indeed the need for specialists becomes apparent in every field of professional endeavour as the technique becomes more advanced; to attempt to abolish specialists or to put impediments in the way of their appearance would be a retrograde step. At the Bar the extent to which specialism has already been carried is enough to show that it fulfils the requirements of litigants. It may be objected that, though a case can be made out for the specialist, yet the system stands condemned because the non-specialist is superfluous. In answer to this two points only need be urged. Without the intervention of the non-specialist the client cannot himself have the necessary knowledge to select the appropriate specialist. Secondly the experience gained during the fifteenth and sixteenth centuries, when specialism among attorneys was enforced by the judges, shows that, if the system does not provide the client with a general practitioner of the law, he will provide one for himself. The question then is not whether there should be specialists, but rather in what relation should the specialist

stand to the non-specialist. The answer is plain. The relation should not be one of partnership. The advantages of prohibiting partnership between the general practitioner of the law and the advocate-specialist are two. It leaves the solicitor free, in fact as well as in name, to select the most suitable counsel for each individual case, and so encourages further specialization among the specialists themselves. Secondly it provides a screen which shelters the advocate from direct contact with the interests and passions of individual clients. It thus fosters at the Bar the growth of a distinct tradition, and in particular of a distinct ethic which stresses the twofold duty of the advocate—a duty not only to prosecute or defend the rights of his client, but also to assist the court to administer justice.

The case for prohibiting partnership between barristers and solicitors is not, however, an argument for the maintenance of rigid barriers. The history of the legal profession is in large part the story of the attempt to break down the barriers with which the various legal specialisms were surrounded in medieval times. There is no reason why this story should not be carried to its logical conclusion, and the rules governing admission to the two remaining 'branches' finally assimilated. To all who specialize in advocacy (in the High Court) general practice, and partnership with those in general practice, would be forbidden; but transfer from general practice to advocacy and from advocacy to general practice would involve neither examinations nor a waiting period. There are other respects in which the present system is too rigid. The maintenance of a screen between counsel and client at present involves, not only the rule which prohibits barristers from practising in partnership with solicitors, but also the rule which forbids a barrister to accept a brief direct from the client. This latter prohibition can only be justified in so far as accords with the principle enunciated above, namely the desirability of protecting the advocate from contact with the knavery or the ignorance and stupidity of individual clients. It ought not to operate therefore, as it now does, to prevent counsel being instructed direct by, for instance, income-tax experts and patent agents. Nor can we see any reason why the secretary of a limited company should not be entitled to consult and brief counsel direct. This need not prevent the intervention of a solicitor where the client desires it or counsel recommends it.

Notaries

In the ancient Roman Law and in systems derived from it, great importance is attached to the formal witnessing of documents by a

notary. In those countries whose law is still largely based upon the Roman Code the notary remains generally speaking an important figure among legal practitioners. In England to-day there is no place for him, except in connexion with business which must be conducted in accordance with some foreign system of law, and in certain branches of English law which have developed from the Law Merchant. The medieval notary, as an officer of the Civil or the Canon Law, in theory derived his authority from the Emperor or the Pope; though it does not appear that the Emperor ever licensed notaries in England, only the papal licence being recognized. 'During the Middle Ages, . . . notaries, . . . if they were not in the ranks of the clergy, . . . were under their guidance and control, wearing the ecclesiastical habit and enjoying the privileges and immunities of the order to which they were allied.'¹ As the part played by the clergy in secular life decreased in importance, so it ceased to be obligatory for notaries to take orders. At the same time the familiarity of the notaries with the drafting of documents led to their becoming a kind of general conveyancers, and in particular to their being consulted by the trading community in the preparation of contracts and analogous documents. Those whose practice was mainly of this type adopted under the name of scriveners the gild form of organization.

The Scriveners' Company is known to have been in existence in 1357; and from 1374 onwards numerous by-laws and ordinances, regulating the training of apprentices and other matters, remain to testify to its activity. By custom if not by law the Company enjoyed a monopoly in the City of preparing all deeds and other documents which required to be authenticated by seal. This monopoly was confirmed in 1617 by a charter (of doubtful legality), and in 1712 by a by-law of the City; but in the eighteenth century it brought them into conflict with the attorneys and solicitors. Prolonged litigation resulted in their defeat, and all ordinary conveyancing passed into the hands of the solicitors; but the Company's monopoly of specifically notarial work was left undisturbed, and in the Public Notaries Act of 1801 was given statutory sanction.

The Company's monopoly only applies to London, and its jurisdiction does not oust the ancient jurisdiction of the ecclesiastical authorities, without whose licence or 'Faculty' it is unlawful to 'use or exercise the office of a Notary, or do any notarial act', either in London or elsewhere.² At the Reformation the licensing

¹ Richard Brooke, *Treatise on the Office and Practice of a Notary of England*, 8th ed. (1925), p. 12.

² 41 Geo. III, c. 79, s. 1.

powers of the Pope passed, nominally to the Archbishop of Canterbury, but actually to an officer known as the Master of the Faculties, who at the present day is always the judge of the provincial courts of Canterbury and York. He grants both 'General Faculties' and 'District Faculties'. Under Acts of 1801 and 1843, which regulate the grant of General Faculties, a five years' apprenticeship to a notary must be served, and the Master of the Faculties may demand testimonials as to character and certificates of competency. The power to demand certificates of competency would clearly enable the Master to impose an examination test; however, no such test is in fact imposed, except by the Scriveners' Company. The Acts leave the Company free to demand such qualifications as they think fit from those applying for admission to the Company, and entrants are required to pass an examination in various subjects including the language and law of at least one foreign country, and to serve an apprenticeship of seven instead of five years. District Faculties are granted under an Act of 1833, which authorized the Master, in any district outside London where a shortage of notaries could be shown to exist, to dispense with the apprenticeship and other requirements demanded of applicants for a General Faculty, and to grant a Faculty to practise within that district to any attorney or solicitor of whose 'fitness' he is satisfied.

The District Faculty was introduced in order to meet the case of provincial towns where the amount of business is very small; and we are led to ask if a solution would not have been better sought in the formal amalgamation of notaries and solicitors. Notarial work falls into two main branches between which there is no very close connexion. Notaries are employed to prepare wills, powers of attorney, articles of partnership and other documents, and to attest them for use in foreign countries. They also translate documents coming from abroad and authenticate translations. Most of this work is concentrated in a few firms practising in London—there are some thirty in all—whose members are seldom or never solicitors and who do little other work. The regulation of these persons might well be left to the Scriveners' Company, who seem to perform their present duties with efficiency. Notaries are also employed, however, to present bills of exchange and note and protest them in case of dishonour, and to note and draw up ships' protests. The practice of provincial notaries is believed to be largely of this character; and practically all provincial notaries, whether they hold General or District Faculties, are also solicitors. The preservation of different systems of regulation—one of them rendered largely inoperative by the force of circumstances—for

persons who, outside London, perform closely related and similar functions appears to be an anachronism, and its continuance is difficult to justify.

PATENT AGENTS

WITH the object of encouraging the improvement of industrial processes the law is prepared to grant to an individual, during a certain period of years, the monopoly of 'working and making any manner of new manufactures' of which he can show that he was the 'true and first inventor'.¹ This right he can either exercise himself, or sell in the market for such a price as it will fetch. It is thus a form of property which needs to be defined in terms of art, to be formally secured to him in accordance with the procedure laid down by the Patent Office, and finally, it may be, to be protected from infringement by trespassers. At none of these stages would an inventor be wise to neglect to take expert advice. Up to a point the advice required is legal in character; and solicitors can, and to some extent do, undertake to give it. To draft a specification, however, or to give an opinion on the novelty of an invention, demands not only a legal, but also a scientific, training such as the solicitor does not normally possess. To give advice and assistance to inventors therefore, there has grown up a distinct profession of 'patent agents'.

The emergence of the true patent agent possessing a skill, partly legal and partly scientific, is of comparatively recent date. It is recorded² that about the year 1776 one Poole, then Clerk of Inventions in the Patent Office, began, in addition to his official duties, to give advice and assistance to inventors; and the practice which he founded subsequently passed to his son. The Pooles described themselves as 'patent agents'; but their practice was confined to the more specifically legal part of the work. They gave no scientific advice and they did not prepare specifications. When such advice was needed they sent their clients to an engineer. In 1835, however, Poole the younger took one of his consultant engineers into partnership, and thenceforward the firm was in a position to give the inventor all the assistance he needed. Other firms begin to be heard of at about the same date; and by the year 1840 there are said to have been seven entries in the London Directory under the

¹ 21 Jac. I, c. 3, s. 6.

² See a valuable account of the origin of the profession contributed by the then President to the *Transactions of the Chartered Institute of Patent Agents*, vol. xxxviii (1919-20), pp. 19 ff.

heading 'Patent Agent'. Thus was this profession born, in the early years of the last century, of a union between law and engineering.

The growing industrialization of the national economy was reflected in 1852 in the passing of a new Patent Act which, by greatly simplifying the procedure and reducing the cost, gave considerable encouragement to the taking-out of patents, and so led to a rapid growth in the number of patent agents. This in turn directed attention to the need for professional organization. In 1862 a Royal Commission was appointed to inquire into the working of the patent laws, and one of its members recorded his opinion that, 'as every person who can obtain employment is at liberty to act as a patent agent, the consequence has been that grossly incompetent and fraudulent persons have acted as patent agents to the great loss and injury of unwary inventors induced to employ them.'¹ He advocated the registration of patent agents by the State; but his suggestions were not acted upon at the time, and for twenty years the profession remained wholly unorganized. In 1882 a voluntary association was formed—the Institute of Patent Agents. Subsequently the Institute received a charter and became the Chartered Institute of Patent Agents by which name it is now known. Its objects were to form a representative organ of the profession able to make authoritative suggestions for the improvement of the patent laws, to provide opportunities for discussion and for the 'acquisition and dissemination' of professional knowledge, and lastly to frame a code of professional conduct for the observance of patent agents.² Its interest in professional conduct quickly led it to join in the demand for registration, and in 1888 Parliament intervened and passed the Patents, Designs, and Trade Marks Act of that year.

The Act of 1888 set up a register of patent agents, but it did not achieve its object of protecting the public from 'incompetent and fraudulent persons'. The only privilege secured to the registered was protection of title; and, whereas the Solicitors Acts have been interpreted as prohibiting the use by an unregistered person of any phrase or description implying that he is qualified to act as a solicitor, it was held that in the Patents, Designs, and Trade Marks Act of 1888 the intention was to protect the words 'Patent Agent' and no more.³ Consequently the unregistered could describe themselves as 'Patent Experts' without infringing the law, and the

¹ Quoted, *Transactions of the Chartered Institute of Patent Agents*, vol. xxxviii (1919-20), p. 24.

² *Charter of the Chartered Institute of Patent Agents*, 1891, preamble.

³ See the cases of *Graham v. Eli*, *Graham v. Hughes*, and *Graham v. Barlow* (1898), reported in *Reports of Patent Cases*, vol. xv (1898), pp. 259 ff.

register had little more than a moral sanction. Admission involved few material advantages, and exclusion trifling disabilities. Such a condition of affairs could hardly be viewed with satisfaction by the profession; and when the patent laws were consolidated in the Patents and Designs Act of 1907 they secured the insertion of a somewhat curious provision which was intended to strengthen the register, but which has no counterpart in other professional registration Acts. Power was given to make rules authorizing the Comptroller-General of Patents to refuse to recognize as agent, in respect of any business coming before him, a person whose name had been erased from the register, or who, never having been registered, had been found guilty of conduct which, had he been registered, would have rendered him liable to have his name erased. But, though rules were made, and successful prosecutions were brought, they were found to be of little value, since there was nothing to prevent the guilty person continuing in practice and employing a clerk to sign papers and appear before the Comptroller.¹ Further efforts on the part of the Institute to secure effective sanctions for the register culminated in the passing of the Patents and Designs Act of 1919.

The Act of 1919 lays it down categorically that 'no person shall practise . . . as a patent agent, unless . . . he is registered'.² The expression 'patent agent' is defined to mean 'a person, firm or company carrying on for gain in the United Kingdom the business of applying for or obtaining patents in the United Kingdom or elsewhere'.³ In the case of a firm every partner must be registered; in the case of a company, every director and the manager, if any. The clause protecting the title 'Patent Agent' remains, though it has become of little consequence except as against solicitors, to whom a saving clause reserves the right to practise whether they are registered or not.

Unlike the Solicitors Acts, the Patent Acts do not specify in detail the qualifications for admission. The Board of Trade is made generally responsible for all matters connected with the register, though rules made by the Board must be laid before Parliament, and can be annulled by resolution of either House. Under the rules now in force the register is kept by the Institute, and admission is confined to those who have passed a preliminary, an intermediate, and a final examination. Of these the Institute is given 'the entire management and control',⁴ though any person aggrieved by anything done by the Institute is given a right of appeal to the Board.

¹ See *Transactions of the Chartered Institute of Patent Agents*, vol. xxxviii (1919-20), p. 27.

² 9 & 10 Geo. V, c. 80, s. 18.

³ *Ibid.*

⁴ See *Register of Patent Agents Rules*, 1920, clause 8.

Every candidate for the final examination must have served for five years in the office of a registered patent agent; but articles are not obligatory, and some exemption is granted to those who have graduated at a university, or who have spent a specified period at a technical college approved by the Institute, or 'in a profession or manufacture similarly approved', or on the Examining Staff of the Patent Office.¹ Solicitors are exempted from the whole period of service; while in 1888 and again in 1919 all who were then in practice were admitted without further test. If any registered person is convicted of felony or misdemeanour, or is struck off the roll of solicitors, or is proved to the satisfaction of the Board of Trade to have been 'guilty of conduct discreditable to a patent agent', the Board may suspend him from practice, or order his name to be erased from the register.² The Board also has power to 'issue orders regulating the professional conduct of persons whose names are on the Register', and to 'delegate the power of enforcing such orders to the Institute, subject to appeal to the Board'.³ Up to the present no order has been issued.

In spite of the important educational duties that have been placed upon it, the Chartered Institute of Patent Agents, like the Law Society, remains a voluntary association in the sense that no patent agent is obliged to belong. Thus membership is voluntary, but only registered persons are eligible; while those who came on the register unexamined in 1888 and 1919 are refused admission unless they pass the final examination. At the present time roughly two-thirds of the 350 patent agents on the register are members. Any member whose name is erased from the register, otherwise than at his own request, forfeits his membership. The Institute can also expel on its own initiative for conduct discreditable to a patent agent, and there has been incorporated in its constitution an ethical code defining some of those forms of conduct which are regarded as 'discreditable'; but expulsion from the Institute, unless followed by erasure from the register, involves the loss of no privileges, beyond the right to use the title 'Chartered Patent Agent' which has been conferred upon members by charter.

The Acts of 1888 and 1919 and the superstructure raised upon them would appear to have given the public sufficient protection against 'incompetent and fraudulent persons'. In its working, however, the system has not proved satisfactory. In particular the retention by the Board of ultimate control over discipline has been

¹ See the 'Rules of Examination' of the Chartered Institute.

² See *Register of Patent Agents Rules*, 1920, clause 17.

³ *Register of Patent Agents Rules*, 1920, clause 21.

unfortunate. Not being a professional body the Board have shown great hesitation in using their powers except where offences of a very grave nature are concerned; while the Institute, acting independently, can do little so long as expulsion from membership does not affect the right to practise. It is open to them to urge the Board to issue orders regulating conduct; and this they have done. But here the same difficulty is met with. The Board have made it clear that they are not prepared to make any order that has not the backing, not only of the Institute, but of the whole body of the registered.

The difficulties may be illustrated from the controversies which have raged round the proposal to prohibit advertisement by patent agents. The subject is one that has engaged the attention of the Institute since its earliest years.¹ As far back as the 'eighties certain 'Recommendations' were adopted, which remained substantially unamended until after the War. Patent agents were 'recommended' to avoid the use of any form of advertisement beyond the insertion in the press of a simple notice of the character and dimensions of a visiting card. In early times, it appears, 'nearly all patent agents advertised freely in the press'.² In the course of time however the 'Recommendations' came to be fairly generally observed among Chartered Patent Agents; though in 1921 advertisement was still widely practised outside the ranks of the Institute, and, in the provinces, to some extent even among Chartered Patent Agents—thus occasioning much resentment among those who observed the spirit of the 'Recommendations'. In that year a general meeting of the Institute passed a resolution urging the Council to prohibit advertisement 'of an undesirable nature', and to punish offenders by expulsion.³ As a result a referendum was taken which showed a five to one majority among members of the Institute in favour of 'stricter control'; provided, however, the 'stricter control' extended to all registered persons. Among the whole body of the registered a bare three to one majority was found to be in favour of 'stricter control'; and in the opinion of a committee appointed by the Council to consider the matter, this was not considered to be a large enough majority to enable the Institute to apply to the Board of Trade to issue an order. Eventually, but not without arousing considerable opposition, a by-law was passed by the Institute prohibiting any advertisement by its own members beyond 'a simple professional card'.⁴

¹ See *Transactions of the Chartered Institute of Patent Agents*, vol. xl (1921-2), pp. 13 ff.

² *Ibid.*, p. 2.

³ *Ibid.*

⁴ *Ibid.*, vol. xli (1922-3), pp. 2 and 3.

In the meantime, however, the Board of Trade, without issuing any order, had taken the curious step of requesting the Council of the Institute to 'call the attention of all patent agents' to the desirability of the observance of certain standards of conduct.¹ Advertisement was not mentioned. The points covered were the impropriety of a patent agent himself taking out a patent, either in his own name or in that of a nominee, and the impropriety of his disclosing confidential information coming to him in the course of his practice. As a result of the Board's representations, the Institute incorporated these additional points in the new by-law. But, since patent agents who are not Fellows of the Institute are not subject to penalties imposed by a by-law of the Institute, it was decided to approach the Board with a view to the promulgation of an order, covering the same points as the new by-law.

It may be that a tactical error was committed in not separating the vexed issue of advertisement from the other issues which had been raised by the Board themselves; though it was perfectly competent to the Board to make an order prohibiting certain practices and not prohibiting others. However they did not do so; and their reply is instructive. They write² to say that 'though they fully sympathize with the Institute in the desire to raise the standard of professional conduct, they are of opinion that the issue of such an order at the present moment would be premature, and undesirable in view of existing circumstances. It would appear that the promulgation of the By-Laws and Rules, in question, have met with a certain amount of opposition on the part of some members of the Institute, representations in this sense having been made to the Board of Trade, and that such By-Laws and Rules are not generally acceptable to all persons who are not members of the Institute. Moreover . . . the only penalty which can be imposed by the Board of Trade under Rule 17 in the case of an agent found guilty of conduct discreditable to a patent agent is suspension or removal of such agent's name from the Register, with the consequence that such agent would be precluded from practising. In the opinion of the Board of Trade such a penalty would be too severe for conduct which has not so far been regarded by all members of the profession as unprofessional.'³

¹ Ibid., pp. 107 and 108.

² Quoted *ibid.*, vol. xlii (1923-4), pp. 113 and 114.

³ The Board concluded with the somewhat foolish suggestion that the objects in view could be largely attained 'if all registered patent agents who are not at present members of the Institute were encouraged to become Fellows'. The Council were quick to see an opportunity of administering a snub to the Board, and replied that under its constitution admission to the Institute was by examination,

There the matter rests. The position is most unsatisfactory; for, though it must not be supposed that there does not exist among many patent agents as high a standard of honour and rectitude as is found in other professions,¹ yet, if forms of conduct are not to be penalized until they have come to be regarded 'by all members of the profession as unprofessional', it is hard to see how any advance in ethical standards can be consolidated. Indeed it is improbable that any solution will be found until the disciplinary powers of the Board of Trade are transferred to the Institute or to some body representative of the registered.

In the educational sphere, where the Institute has considerable initiative, the system has shown itself less open to criticism. In regard to practical training the requirements laid down by the Institute have considerable elasticity,² and contrast favourably in this respect with the rigid systems imposed in some professions. The Institute is also alive to the importance of requiring a high standard of theoretical qualification from candidates for admission to the register, and the standard required may be gauged from the fact that in seven recent years only 38 per cent. of those who entered were successful in passing the final examination. Nevertheless there is room for improvement. For example the examinations appear somewhat narrow in scope, and it is remarkable to find no paper in law outside the restricted field of patent and trademark law. Again, though the examination standard may be high, facilities for theoretical training are scarce. In providing for the 'acquisition' of professional knowledge—one of its declared objects—the Institute has done less than might have been hoped. It is not suggested that it should itself assume the role of a teaching body;

which could only be dispensed with in exceptional cases where the candidate's education, experience, and standing justified it, and that 'it would seem to be undesirable in the public interest and unjust to existing Fellows to allot the distinction of Fellowship of the Institute to a body of practitioners who, for the most part, have not been shown to be possessed of the qualifications with which the Board of Trade would have been satisfied, save in the exceptional and temporary circumstances which existed upon the recent closing of the profession'. *Transactions of the Chartered Institute of Patent Agents*, vol. xlii (1923-4) pp. 114 and 115.

¹ For example, the better opinion has long been opposed to the taking out of patents by a patent agent. If an idea which might be the subject of a patent occurs to a patent agent as a result of work he has been doing for a client, it is felt that the property in the idea should be regarded as belonging to the client, who should be given the opportunity of incorporating it in his application. If, on the other hand, it occurs to him independently of any professional business on which he has been engaged, then it is thought that he should communicate it to a learned society or technical journal, 'for he never knows when a conflict between his own interest and his duty to a client may arise'. *Transactions of the Chartered Institute of Patent Agents*, vol. xxxviii (1919-20), pp. 30 ff.

² See above, p. 61.

but it is disappointing to find no evidence of any attempt to co-operate with specifically teaching institutions in the inauguration of courses of study adapted for entrants to the profession. A large proportion of entrants have graduated at a university—34 per cent. during the ten years 1921–30. But, whereas the universities offer degrees in the physical sciences and in legal studies, they have not attempted, nor have they been encouraged, to combine these subjects in a course suitable for patent agents.

In the 'dissemination' of professional knowledge and the promotion of improvements in the patent laws more activity is shown. The Institute publishes an annual volume of *Transactions* containing papers on patent law and practice which form, so we are told, a valuable contribution to the literature of this subject. It also publishes *The Patent and Trade Mark Laws of the World*, a series which already runs into many volumes and is subject to constant revision to keep it up to date. From time to time representations are made to the Patent Office for the reform of British patent law and procedure, and it is usual to invite the council to nominate representatives to sit on any departmental committee or other body appointed to inquire into the working of the law. On the other hand, though the profession is one whose technique brings its members into unusually close contact with international questions, it is alleged by one whose opinion is entitled to be heard that the profession might well participate more fully in matters of international policy than has in the past been the case.¹

DOCTORS

The Origin of the Profession

THOSE medical reformers of the first half of the nineteenth century who proposed to wipe the slate clean did not get their way. When reform came in 1858, it took the shape of a compromise. For some hundreds of years the medical corporations and the universities had been granting licences to practise; a place was found for them in the new organization of 1858, and they continue to exercise these functions at the present day. Thus the existing organization has roots deep in the past, and to that past some reference must first be made.

¹ See *Transactions of the Chartered Institute of Patent Agents*, vol. xliii (1924–5), p. 130.

The study of Byzantine authors formed the background of medical teaching in English monasteries from the time of Bede to the Norman period. Arabian influence then came in by way of Salerno. There was a close bond between medicine and the Church, though 'there is sufficient evidence to show that, as early as the seventh century, there were lay physicians in this country who were freely consulted by prominent ecclesiastics'.¹ This bond was drawn closer when the universities were founded; they were under ecclesiastical influence and physic was studied in them from their earliest days. It was not numbered among the seven liberal arts; Vano indeed had distinguished nine liberal arts, including medicine and architecture, but the last two were not recognized by Cassiodorus, Capella, and Isodore. Physic, together with theology, and civil and canon law, were studied in superior faculties.

Those who wished to become physicians usually passed through an arts course and subsequently graduated in medicine, obtaining a licence to practise from the university. As students of the university they became clerks and took the tonsure. Clerkship did not imply proceeding even to minor orders, but, inasmuch as professional advancement took the shape of appointment to benefices, it was customary to take minor and priests' orders, whenever chances of promotion offered themselves which required a higher ecclesiastical status. The king and the bishops rewarded their physicians with canonries and rectories and were thus absolved from paying large salaries. In the fifteenth century Gilbert Kymer graduated some time before 1420 as master of arts, of philosophy, and of medicine. He became principal of Hart Hall, and before he had taken orders, was presented to the living of Lutterworth. In 1427 he was ordained and subsequently held many ecclesiastical offices and the Chancellorship of Oxford. His advancement in the ecclesiastical hierarchy to enable him to hold posts, to which his growing eminence as a physician entitled him, was typical of the century before the Reformation. Chaucer's physician studied little upon the Bible; but he was well dressed, as befitted a man belonging to a profession of standing.

Surgery was not studied at our medieval universities. Furthermore the church did not approve the shedding of blood by ecclesiastics; indeed it did not always look with favour upon the study of medicine by monks and beneficed clergy, and many attempts were made to discourage it. Therefore the surgeons, who were neither university graduates nor ecclesiastics, stood apart from the physicians. Some of them, however, attained a high status, and when

¹ C. J. Singer, *From Magic to Science* (1928), p. 138.

Henry V went to France, on the campaign which led to Agincourt, he took with him, as physician, Nicolas Colnet, and as surgeon Thomas Morstede, for each of whom were provided an equivalent guard and equal pay. In London these outstanding surgeons obtained ordinances and were recognized as constituting a separate mystery in 1353. Witness is borne to the substantial equality between the two callings by the proposal to obtain a conjoint faculty for physicians and surgeons for which Thomas Morstede seems to have been responsible. 'In the first year of the reign of Henry VI Gilbert Kymer, Master of Arts, Doctor of Medicine and Rector of Medicine in the City of London, appeared with the two Surveyours of the Faculty of Physic and the two Masters of the Craft of Surgery before the Mayor to ask for the authorization of their professional organization. Their rules were meant to ensure that all practitioners in both branches should be duly qualified, if possible, by a University training, and they sought to provide a hall where reading and disputation in Philosophy and medicine could be regularly carried on. No physician was to receive upon himself any cure, "desperate or deadly", without showing it within two or three days to the Rector or one of the Surveyours in order that a professional consultation might be held, and no surgeon was to make any cutting or cauterization which might result in death or maiming without similar notice. Any sick man in need of professional help but too poor to pay for it, might have it by applying to the Rector. In other cases the physician was not to charge excessive fees but to fix them in accordance with the power of the sick man and "measurably after the deserving of his labour". A body composed of two physicians, two surgeons, and two apothecaries was to search all shops for "false and sophisticated medicines", and to pour all quack remedies into the gutter.'¹ If the petition was granted, which seems uncertain, the arrangement did not last for long. The two branches of the same great profession went their own ways, to be united again only within our own times.

Towards the end of the fifteenth century the revival of learning began to exert a profound influence upon the study of physic. Many of those who went abroad to associate with foreign scholars were attracted to the exploration of Greek medical literature. Of them Thomas Linacre was the most eminent, and his academic career is typical in its general outlines of the careers of many who contributed to the change which came over the world of physic. He was born about 1460, and after passing through the arts course, became a fellow of All Souls. About 1485 he went to Padua, where,

¹ G. Unwin, *Gilds and Companies of London* (1908), p. 173.

after residing for some time, he took the degree of Doctor of Medicine. On returning home he received the Oxford degree of Medicine. Linacre was thus a man of the new learning; and it was a renewed interest in Greek literature and not in science which changed the direction of medical studies. The leading physicians came to take high places in the world of scholarship. When Henry VIII granted a charter to the Royal College of Physicians, he did so 'partly imitating the example of well governed cities in Italy and many other nations';¹ the College was on the one side a learned academy of the kind with which the physicians had become familiar in their travels, and on the other side a gild.

The incorporation of the College was due more to Linacre than to any other man. To him and five other physicians letters patent were granted in 1518. All his colleagues are said to have possessed foreign medical degrees. With certain modifications and extensions, the powers of the College were confirmed by an Act of 1522 which laid down that it was 'expedient and necessary to provide that no person . . . be suffered to exercise and practise physic but only those persons that be profound, sad and discreet, groundedly learned, and deeply studied in physic'.² Therefore it was enacted that no person, except a graduate of Oxford or Cambridge, should be allowed to practise physic unless examined and approved by the College. Power to examine medicines within a seven mile radius of London was also given. Four Censors were to be elected annually, and to them was entrusted the oversight of physicians and the scrutiny of medicines.

The history of the surgeons followed a very different course. As the physicians rose, the surgeons sank in status. Early in the fourteenth century the latter had been organized in a gild of the usual form which remained small and numbered in 1435, so it is said, only seventeen members. They were mostly court and army surgeons and for a time ranked with the physicians. They did not come, however, into direct contact with Greek learning, and tended more and more, as the century went on, to form close relations with the inferior tribe of barbers. The latter had been organized in a gild from the early fourteenth century, and in 1461 they obtained a charter which recited that they had long exercised their labour in healing and curing wounds, as well as in healing and tooth-drawing, but that, owing to certain inexpert persons, divers people had greatly suffered. They were, therefore, granted the right of search and inquisition over all freemen in London being barbers and using

¹ *Charter of the Royal College of Physicians of London, 1518.*

² 14 & 15 Hen. VIII, c. 5.

the mystery of surgery. Every barber was required to seek approval by the masters of the gild. Owing apparently to the growing power of the barbers, the surgeons came to an understanding with them which led in 1540 to an amalgamation of crafts, and, just as the Glovers and Pursers were united into the Glover-Pursers, so the Barbers and Surgeons were united into the Barber-Surgeons. At the same time the practices of barber and surgeon within the gild were kept distinct, and no barber was to be a surgeon, except in respect of tooth-drawing, and no surgeon was to shave any one. These changes marked the descent of the art of surgery to a trade, and two centuries elapsed during which there was a wide gulf between the high estate of the physician and the low position of the surgeon.

From the earliest times there has followed upon the heels of the regular practitioners a host of unqualified and mostly inexperienced persons, and the quack dogs the footsteps of the qualified doctor at the present day. It is only in recent times, however, that the formal attempt to restrict practice to the qualified has been abandoned. The ordinances and charters of the gilds aimed at such restriction. There was legislation in 1421, apparently taking the form of ordinance rather than of statute, which restricted the practice of medicine and surgery to those with a proper training; physicians were to be approved by universities and surgeons by the gilds. In 1511 an Act forbade the practice of physic and surgery by unlicensed folk, and required the examination and licensing of all physicians and surgeons. The Act recited that these arts were practised by unskilful persons, smiths, weavers, and women, partly using sorcery and witchcraft, to the grievous hurt and damage of the people, and 'most specially of them that cannot discern the uncunning from the cunning'.¹ It was enacted that, saving the rights of Oxford and Cambridge, candidates in London must be examined and approved by the Bishop of London or the Dean of St. Paul's with the aid of physicians, or in the country by the Bishop of the Diocese with professional aid. Colet, who was a friend of Linacre, was Dean of St. Paul's at the time, and it is likely that Linacre inspired the Act. No mention is made of this Act in the charter of the Royal College of Physicians granted in 1518 or in the Act of 1522 confirming that charter. In the outcome, for the next hundred and fifty years, licensing went on both by the medical corporations and by the ecclesiastical authorities, sometimes with harmonious co-operation and sometimes at cross purposes.

¹ 3 Hen. VIII, c. 11.

From the Sixteenth Century to the Apothecaries Act

During the sixteenth century many members of the Royal College of Physicians were men of great distinction. They were among the foremost contributors to the intellectual renaissance, and mixed with the world of More, Colet, and Erasmus. The bond between the College and the universities was close. John Clement, president of the College in 1544, was professor of Greek at Oxford, and John Caius, president in 1555, was responsible for raising the status of Gonville Hall to that of a college, which now bears his name and of which he was Master. It was the College which maintained the standard of medical learning in England. The Oxford medical school, which had never been large, was 'lamentably weak' in Elizabethan times.¹ Between 1571 and 1600 only some fifty medical degrees and thirty-five licences were granted, and they were sometimes given carelessly. On one occasion this carelessness caused the College to complain. It would seem that a certain Simon Ludford failed to satisfy the College of his medical qualifications, and would have nevertheless obtained a medical degree at Oxford, had it not been for representations made by the College. But while the College at this period sought to maintain high standards, it did not then or later make any attempt to provide practitioners in numbers sufficient for the needs of the people at large.

During the first decades of the existence of the College the leading members were mostly in orders. Ordination was generally delayed; Linacre was ordained, for instance, when he was forty-nine years old. As the century went on, the association of the profession of physic with the Church came to an end, and Gilbert and Harvey had no clerical status. While the College did much to advance the scholarship and the academic respectability of medicine during the sixteenth century, it was not until after the middle of the seventeenth century that it began to contribute to the science of medicine. There were many physicians among those whose informal meetings led to the formation of the Royal Society. But towards the end of the century the College showed signs of losing its pre-eminence as a centre both of scholarship and of learning. The famous physicians of the eighteenth century contrast sharply with those of the two preceding centuries. Radcliffe, who refused to take orders for the purpose of retaining his fellowship at Lincoln, and Mead, the two leading physicians of the early eighteenth century, were men of fashion who made large fortunes from the practice of their profession. Garth, the poet, Arbuthnot, the wit,

¹ C. E. Mallet, *A History of the University of Oxford* (1924), vol. ii, p. 133.

and Freind, the historian, were all remarkable for their literary tastes and their association with the world of wealth rather than for professional skill or scientific eminence.

This falling away from the ideals of the College is not hard to explain. The physicians had long established themselves in the upper ranks of society, and when scientific inquiry lost its novelty, they joined in the ample life of the great houses where elegance and wit were pursued. The College had always been exclusive and came ultimately to draw almost wholly upon Oxford and Cambridge. This exclusiveness, which had already worked disadvantageously to the College, had serious ill effects when the ancient universities sank into their eighteenth-century torpor. Social qualifications became the first requirement for membership, and it was held that the necessary 'morals and manners' could be learnt only at the universities.¹ The position was summed up by Neil Arnott, a licentiate of the College:

'Legislation, with respect to the practice of medicine, could have in view only to ensure to the public an abundance of the best medical service. . . . The charter originally granted to the College of Physicians seems to have been given with such intentions; in fact, it expressly states that these were its objects. The management of the College, however, instead of keeping those objects in view, seems almost entirely to have neglected them; and to have considered chiefly the personal advantage of the members, or the corporate advantage of the body. That there might be an abundance of the best medical talent on service in the country, it was necessary that the profession should be honourable and sufficiently lucrative, and that there should be free admission to its honours and advantages to those persons who, by acquiring the high attainments and character suiting a physician, were deserving of them. Thus young men about to choose a profession would have been attracted by the medical, as readily as by any of the other honourable professions in the country, as of the church, the law, or the army. Instead, however, of the profession generally being rendered honourable, as it should have been, and attractive, by the exclusion of the ill-educated and unworthy, the subsequent expulsion of persons who might become unworthy, the suppression of quackery, and there being free entrance to it for the deserving, many of the best educated members of the profession have been by by-laws, conceived in a spirit of monopoly, injuriously excluded from the honour of the fellowship of the College and have remained liable to be confounded with practitioners of very inferior acquirements and character, permitted by the College to exist, although, I believe, the College had the power of preventing them. . . .'²

¹ See the *Report of the Select Committee on Medical Education* (1834), part i, p. 94, where there is to be found a long discussion of this matter.

² *Ibid.*, p. 151.

This witness looked at the situation from a peculiar angle. He was a licentiate of the College and he was aggrieved at its exclusive policy in respect of the fellowship. It had made by-laws, illegally according to Lord Mansfield, limiting the number of fellows at one time to twenty.¹ But the licentiateship was also hedged about by restrictions; in 1834 there were only 274 licentiates and 113 fellows. Arnott would like to have seen the lower grade fully open to qualified men and the higher grade recruited from the lower. He would also have had the College suppress the practitioners of inferior requirements, by which he meant the apothecaries, but it is uncertain whether the College had power to restrain the latter. In any case the charge that it was never attempted will not bear examination. In its earlier days the College harried both the apothecaries and the surgeons; it would be more proper to charge it with not harrying the real quacks. The campaign against the apothecaries did not succeed, primarily because the exclusion policy resulted in keeping the number of physicians so low that an inferior body, catering to the needs of the general public, was bound by the mere logic of the situation to force its way sooner or later to a form of recognition.

The apothecaries, who arose to fill the gap, were originally a species of grocers. The grocers had originated in 1345 from an amalgamation of the pepperers and spicers, who became incorporated in 1428. In a new charter, granted to the grocers in 1606, the apothecaries received specific mention. In 1617 the apothecaries obtained a separate charter and the grocers were forbidden to sell drugs. The Society of Apothecaries, which thus came into existence about a century after the Royal College of Physicians, continues to exercise important functions at the present day. From an early date the apothecaries had been in the habit of prescribing as well as of selling drugs; from time to time they claimed this former function as of ancient right. An Act of 1542 gave the apothecaries an opening. It recited that the Company of Surgeons, having minded only their own advantage and nothing the profit or ease of the diseased, had vexed divers honest persons, as well men as women, whom God had endowed with the knowledge of the nature, kind, and operation of certain herbs, roots, and waters. These persons had given freely to the poor, whereas the surgeons had taken high fees and had let many folk rot and die, much to their blame. It was therefore enacted that good persons, knowing the nature of herbs, might cure outward sores by herbs and ointments.

This Act gave the apothecaries an opportunity to prescribe, and

¹ *Report of the Select Committee on Medical Education* (1834), part i, p. 36.

they were not without some elementary knowledge of the art. As time went on, it became evident that to the apothecaries alone the mass of the people could look for medical treatment. The universities were turning out very few physicians, and the College was restricting the fellowship to their graduates, while the licentiate-ship was hardly more widely open. The licence of the graduates of the rising Scottish universities did not entitle them to practise in England. It is thus not astonishing that during the seventeenth century the apothecaries made considerable inroads into the territory marked out for the physicians. There were frequent contests between the Society and the College, and the former greatly strengthened its position at the time of the plague of London. Its members remained to look after the sick, whereas the physicians mostly retired into the country. The College made a counter attack in 1687, and ruled that all members should give free medical service under certain circumstances; a free dispensary was opened in the following year. The new policy was the subject of disputes within the College and with the Society outside. Garth's poem, *The Dispensary*, has reference to this episode. Dr. Johnson gives an account of this dispute in his life of Garth, which was highly favourable to the physicians; he says that the poem was 'on the side of charity against the intrigues of interest, and of regular learning against licentious usurpation of medical authority.'¹

In 1703 the apothecaries gained a decisive victory when it was held by the House of Lords, in the case of *The Royal College of Physicians v. Rose*, that the function of an apothecary consisted, not only in compounding and dispensing, but also in directing and ordering the remedies to be employed in the treatment of disease. Thenceforward the apothecaries came to form an inferior order of medical practitioners. The Society, whose members were numerous and energetic, set about to consolidate its position. An Act of 1722 gave the Society power to visit the shops of all apothecaries practising in London, and an Act of 1748 authorized the Society to appoint a board of examiners without whose licence no one should be allowed to dispense medicines in London or within seven miles of it.

For the greater part of this period there is little to relate of the surgeons. The physicians lorded it over them. An Act of 1540 gave the physicians the right to practise surgery. Surgeons had no legal right to prescribe for their patients and could not perform a major operation without the consent of a physician. Of an earlier time it has been said that in 'northern Europe the learned physicians

¹ Samuel Johnson, *Lives of the Poets* (1890), vol. ii, p. 69.

looked down upon the chirurgions as mere manual operators',¹ and this remained true of England up to well into the eighteenth century. The surgeons were also in thralldom to the ecclesiastical authorities. Under the Act of 1511 'the licence of the bishop of the diocese or in London of the Dean of Saint Paul's was sufficient to qualify for the practice of surgery; this was found to interfere very materially with the efforts made by the company to improve the status of the profession. In 1599 it was found expedient to come to an understanding with the Bishop upon the question.'² Accordingly it was agreed that the Bishop should license only those candidates who had been approved by the Company, and under this system the presentation to the bishop became a kind of formal graduation. But not every bishop was content to deprive himself of all but formal powers, and from time to time, even as late as 1711, there were disputes with the ecclesiastical authorities on this subject. On various occasions there were other difficulties to face. A declaration of peace sometimes threw out of employment regimental surgeons who had never been admitted to the freedom of the Company and had no legal right to practise. When the Company tried to stop them from practising, they were found to have such powerful protection that it was deemed best to leave them alone.

The rise of the profession in the eighteenth century from this low level was due in part to a succession of able surgeons and in part to the progress of the art which they employed. John Woodall (1556-1643) was succeeded by Richard Wiseman (1622-76), and their work was continued in the following century by Samuel Sharp, Percival Pott (1714-88), and John Hunter (1728-93). But no succession of practitioners, however able, could have elevated their calling to the eminence it subsequently reached, if the technique which they employed had undergone no evolution. It is not within the scheme of this book to enter into details regarding the evolution of professional techniques. But it is a matter of much interest to note that during the sixteenth and seventeenth centuries the surgeons' branch of the Barber-Surgeons Company, almost alone among the gilds, showed signs of progress and not of fossilization. As evidence of progress there is the continual elaboration and revision of the rules for examinations, the arrangements for instruction and the foundation of lectureships. Surgical knowledge was advancing and the standards required by the

¹ H. Rashdall, *The Universities of Europe in the Middle Ages* (1895), vol. i, p. 418.

² J. F. South, *Memorials of the Craft of Surgery in England* (1886), p. 154.

Company of entrants were being slowly raised. It is no wonder that the living half of the Barber-Surgeons Company came to desire separation from the dead or dying portion, and in 1684 an unsuccessful petition was presented praying for the dissolution of the united Company. Another petition presented in 1744 was successful, and in 1745 an Act was passed dissolving the union of the barbers and surgeons and establishing two separate companies. The barbers' organization suffered the fate of nearly all gilds; if they did not perish, they survived only as fossils. The formation of the Company of Surgeons, on the other hand, marked the beginning of a new era. Few episodes in medical history are more remarkable than the rapid rise of the surgeons in the latter half of the eighteenth century. On the scientific side the fame of John Hunter brought great and deserved prestige to surgery. A few of the most eminent practitioners reached a position not socially inferior to that of the leading physicians; Sir Caesar Hawkins received his title for professional services in 1778, and was the first surgeon so honoured. The Company of Surgeons came to a somewhat inglorious end in 1796, owing to certain irregularities in the conduct of its proceedings. A new charter was secured in 1800, which severed all connexion with the City of London and incorporated the Royal College of Surgeons of London.

Medical Reform

At the beginning of the last century the medical profession was organized in a hierarchy with the physicians at the top, and below, in descending order of prestige, 'the three inferior grades of surgeons, apothecaries and even druggists'.¹ This form of organization was not dictated by the nature of medical technique. On the contrary, it militated against the full employment of the medical knowledge of the time. The attempt was not often made to defend the dominance of the physicians on the ground that they were consultants. The usual line of defence was that taken by Burrows when he spoke of 'the great advantages which result to society from there being an order of men within the profession who have had an education with the members of other learned professions; from a certain class of the medical profession having been educated with the gentry of the country, and having thereby acquired a tone of feeling which is very beneficial to the profession as a whole'.² The physicians were so firmly entrenched that they could snub the inferior grades with impunity. It will be remembered with what

¹ *Report of the Select Committee on Medical Education* (1834), part ii, p. 20.

² *Report of the Select Committee on Medical Registration* (1847), p. 27.

contempt Dr. Parker Peps, 'the court Physician', treated Mr. Pilkins, 'the family surgeon', during the illness of Mrs. Dombey, and readers of Thackeray will recall the attitude of Dr. Firmin. The physicians could also afford to resist all attempts to 'reform' the College. Indeed the College held out against the efforts of the reformers of the early nineteenth century at least as long as any of the institutions of importance which carried over into that century the exclusiveness, hauteur, and apathy of the eighteenth.

The members of the Royal College of Surgeons were hardly more numerous than the fellows of the Royal College of Physicians. In 1834 they numbered about 200, and to them was reserved all control of the College. But there were in addition, at the same date, over 8,000 licentiates, and the College was performing a service in examining these persons and granting to them licences to practise; contemporary complaints, however, as to the low standards required of candidates should prevent us from rating these services too highly.¹ The 8,000 licentiates in 1834 were mostly apothecaries, who, having obtained a medical qualification under the Apothecaries Act of 1815, about to be described, desired in addition a surgical qualification. But this is to anticipate. The story of medical reform begins with the growth in the late eighteenth century of the habit among apothecaries of taking a second qualification. Thus arose the 'surgeon-apothecaries'. 'We know a few secrets of nature in our profession, sir', said Mr. Jobling. 'Of course we do. We study for that; we pass the Hall and the College for that; and we take our station in society on that.' And the station which they took was low. In spite of their surgical qualification they ranked with the apothecaries. It was a great misfortune for John Pendennis, who came of a good family, that circumstances should have forced him into 'so odious a calling' as that of an apothecary. Readers of *Emma* will remember the excitement when Mr. Perry, the apothecary, was so forward as 'to set up his carriage'. Unlike the physician and the surgeon, the apothecary charged for the drugs which he supplied and not for the services which he rendered, and this led to his becoming associated in the mind of the public with the small trader.² To complete the picture a word must

¹ *Report of the Select Committee on Medical Education* (1834), part ii, p. 84. Light is thrown upon the activities of some of the licensing authorities by the following figures. Between the years 1842 and 1844 inclusive the Royal College of Physicians granted 37 licences (only 37 candidates having presented themselves), Oxford 7, and Cambridge 9, whereas the Society of Apothecaries granted 953 and Edinburgh 331 licences (*Returns from the Colleges of Physicians and Surgeons, the Societies of Apothecaries and the Universities of Great Britain*, 1846).

² John Pendennis had his name painted on a board 'surmounted by a gilt pestle and mortar over the door of a very humble little shop' where he sold

be said of the chemists and druggists. They had come upon the scene during the hundred and fifty years before the period of which we are speaking. As the apothecaries had advanced into the territory of the physicians, they had been taken in the rear by the chemists and druggists who, following the example of their predecessors, were showing signs of claiming the right to prescribe.

These grades of practitioners carried out their functions under a number of Acts and charters. To a few of the more important of the former reference has been made above. But for the sake of simplicity nothing has yet been said of the rise of universities and medical corporations in Scotland and Ireland with licensing powers. In 1800 there were apparently eighteen licensing authorities in the United Kingdom. The licence which any authority could grant was limited as to function and also as to territory. Thus the Faculty of Physicians and Surgeons of Glasgow had exclusive jurisdiction in the counties of Lanark, Renfrew, and Ayr, and in certain burghs.¹ The existence of numerous licensing authorities, with powers limited as to territory, was not the only element in the organization making for complexity. There were many loosely drawn statutes in force governing medical practice, which were compatible neither with one another nor with the terms of some of the charters. It is not possible to describe the legal structure of the medical profession at this period; no coherent structure or system existed. Chaos reigned.

Much attention has lately been given by historians to the improvement in health services which resulted in a marked fall in the death-rate towards the end of the eighteenth century. Credit for this improvement is largely due to the apothecaries, and especially to those among them who had been energetic enough to obtain a second qualification. The more able and public spirited became profoundly impressed with the need for doing away with the unqualified and for raising the attainments of the qualified. If they had as an ideal an all-embracing scheme of reform, they did not press it, but contented themselves with framing a bill on more

'tooth-brushes, hair powder and London perfumery'. As he began to prosper he gave up the selling of tooth-brushes; then he shut up his shop and kept only a surgery. He finally rose through the stage of a gig to the dignity of a closed carriage. Bob Sawyer and Ben Allen were to be found in the 'little surgery behind the shop'. In *Martin Chuzzlewit* we learn that there was 'no medical practitioner actually resident in the village, but a poor apothecary who was also a grocer and a general dealer'. On the other hand the position of the physician, such as Firmin, was not above suspicion. 'I dine at Firmin's house, who has married into a good family, though he is only a doctor', says a character in *The Adventures of Philip*.

¹ For a summary of the conditions then prevailing see W. Rivington, *The Medical Profession* (1888), p. 100.

modest lines. These apothecaries and apothecary-surgeons, organized in a voluntary association, attempted to induce the ancient medical corporations to take up their bill. Meeting with no success, they turned to the Society of Apothecaries, which agreed to sponsor it. The petition accompanying the bill pointed out that the apothecaries were 'very generally entrusted with the medical and surgical care of the population of the kingdom' and stressed the need for 'regular medical education'. It was urged that the 'health of the community was endangered' by the existence of the unqualified practitioners.¹ The bill met with little serious opposition and became law in 1815.

This remarkable Act, with its interesting provisions, has received far less attention than it deserves from those who have studied the trend of legislation in the last century. It would not be astonishing to find it among the accomplishments of the reformed Parliament, but it stands somewhat isolated in the legislation of the preceding period. It is, however, of interest here owing to the profound changes which it produced in the medical profession. The Apothecaries Act gave power to the Society of Apothecaries to examine all apothecaries throughout England and Wales. No one was to be examined who had not served an apprenticeship for five years, and only those who had been examined and licensed by the Society were to have the right to practise as apothecaries. The Society was given the right to prosecute all those who practised without a licence, but chemists and druggists and those in practice at the time of the passing of the Act were excluded from its operation. It was also provided that nothing in the Act should interfere with the rights and privileges of the English universities and the English Colleges of Physicians and Surgeons. A clause imposed penalties on any apothecary who should refuse to compound and dispense medicines on the order of a physician. It is clear that the Act contemplated the recognition of an inferior order of medical practitioners and the exclusion from medical practice of such as had not obtained a licence from a university or a medical corporation.

The Society of Apothecaries set about to put the Act into operation with energy and good sense. Much thought was given to the requirements expected of candidates, and conditions were laid down and frequently revised as to apprenticeship, attendance at lectures, and hospital-experience. The subjects set at the examinations were carefully considered and reconsidered. This seems to us now to be merely in the ordinary course of routine; but it must be

¹ *Parliamentary Debates*, vol. xxvii, Friday, Nov. 19, 1814.

remembered that in this matter the Society was a pioneer. The modern examination technique had not been invented; the Society was, for instance, among the first examining institutions to set written questions to be answered in writing. It is true that the universities had examined from their earliest days, but their examination technique took the form of disputations and had not been improved. In 1834 the Presidents of the Royal College of Physicians and the Royal College of Surgeons paid generous tributes to the use which the Society has made of its powers, though from the nature of the case they were not disposed to be friendly. 'They have executed that Act extremely well,' said the former, 'the character of that branch of the profession has been amazingly raised since they have had that authority.'¹ 'I must declare', said the latter, 'my sense of the admirable manner in which the Apothecaries Company have done their duty to the public.'²

One very important result of the Act was to bring into being a system of medical education. Unless the enforcement of apprenticeship is regarded as part of a system of education, the medical corporations had been no more than licensing bodies. Certain lectureships had been in existence for some two hundred years, but they were intended to benefit practitioners and not students. On the other hand the universities were teaching as well as licensing bodies. But neither at Oxford nor at Cambridge had a vigorous school of medicine ever arisen, and in the eighteenth century medical instruction existed only in theory at the ancient universities. The Royal Commissioners of 1852 reported that Oxford 'has ceased altogether to be a school of medicine'.³ The Regius Professor of Medicine at Cambridge, speaking at the same date, said that 'the general condition of this branch of study in the university is at present at a very low ebb'.⁴ Although the reform of the examination system had been taken in hand at Oxford early in the nineteenth century, it was not until 1835 that the antiquated rules of the Laudian code were seriously revised so far as medicine was concerned. At that date it was provided that candidates for the Bachelorship in Medicine should be no longer required to take an arts degree, but only a preliminary examination in arts; the study of Hippocrates and Galen, however, was still retained in the medical course, though provisions were made for practical training.

¹ *Report of the Select Committee on Medical Education* (1834), part i, p. 16.

² *Ibid.*, part ii, p. 48.

³ *Report of the Oxford University Commission* (1852), p. 71.

⁴ *Report of the Cambridge University Commission* (1852), Correspondence and Evidence, p. 81.

There are records of organized instruction of students at hospitals from as early as the end of the seventeenth century; but for the next hundred years nothing definite emerged. At the end of the following century it became customary to supplement apprenticeship by 'walking the hospitals'; and at four London hospitals something in the nature of a medical school arose. The staffs of these hospitals organized instruction; the arrangements, however, were private, and the relation of the student to the staff was with difficulty distinguished from that of an apprentice to his master. After the passing of the Apothecaries Act numerous private medical schools arose which were not attached to any hospital. They were usually the private property of a medical practitioner, and to them resorted those who wished to obtain a licence under the Act. They were the first medical schools in the true sense of the word; they performed a useful function for a couple of decades, and were then superseded by the modern type of hospital medical school. The first school in the new model was organized by University College soon after its foundation in 1827, and other medical schools of the same kind were opened soon afterwards not only in London but also in the provinces. Apprenticeship lingered for some time, but training in the basic sciences, followed by instruction in medicine and accompanied by practical experience in a hospital, gradually became the necessary preliminary to obtaining a licence.

The Apothecaries Act had been passed to achieve two main objects, of which the first was the creation of an educated but subordinate class of medical practitioner, and the second the suppression of the unqualified. If it is judged by its achievements in the first sphere, it must be reckoned as one of the most successful Acts which Parliament has ever passed. There grew up within a decade a class of relatively well-educated and vigorous practitioners who, nevertheless, remained the inferiors of the physicians and surgeons in social estimation. The unbiassed testimony of the heads of the two great medical corporations, which has been quoted, bears witness to this fact. The licentiates of the Apothecaries Society continued for the most part to obtain from the College of Surgeons a qualification in the other branch of the profession, and in consequence, some time before 1830, the habit grew up of calling them by the descriptive term 'general practitioner'.¹ 'The Surgeon-Apothecary,' said a pamphleteer of 1845, 'is the General Practitioner of the day. He is called by this term because he practises every department of medicine. He never for a moment discusses

¹ *Report of the Select Committee on Medical Registration* (1847), p. 20.

whether a case be medical or surgical.’¹ If, on the other hand, the Act be judged by its success in suppressing the unqualified, it must be accounted a failure. It was acknowledged by the Society of Apothecaries in 1844 that ‘there is no doubt that the number of unqualified persons who are at this time engaged in practice is very considerable’.² It may be that the idea of eliminating the quack is incapable of attainment. The immediate cause of failure in this case, however, was the inadequacy of the powers with which the Society was armed. In a statement published by the Society in self-defence, after some thirty years’ experience of the working of the Act, the following passage occurs: ‘The punishment [for unlicensed practice] being a penalty recovered only by action of debt which must be tried at the assizes for the county in which the offence is committed; the number of witnesses required to establish a conclusive case; the great expense necessarily attending the proceedings and the difficulty in most instances of obtaining sufficient evidence to warrant the adoption of proceedings, all combine to put it out of the Society’s power to institute frequent prosecutions.’³ It must also be remembered that chemists and druggists were exempted from the provisions of the Act, and there is evidence that many of them were prescribing over the counter.⁴

Even if the Apothecaries Act had completely fulfilled both objects, the problem of medical organization would not have been solved. The creation of a class of general practitioners, whose services were available for the community as a whole, was a big step forward. But in a sense the problem was only aggravated; and, the better educated the general practitioner became, the more deeply he felt his subservience to the physician and the surgeon. The physician was as firmly entrenched as ever. In 1834 he was described as combining ‘not only the qualifications necessary for the successful practice of physic but those which give dignity to his professional and respectability to his private character. He was distinguished by large attainments as a scholar; by sound religious principles as a Christian; by practical worth and virtue as a good member of society and by polished manners as a well-bred gentleman.’⁵ The Act did nothing to heal the breach between medicine and surgery, and there were complaints that the standards required

¹ Surgeon Snipe, *Remarks on Physicians, Surgeons, Druggists and Quacks* (1845), p. 37.

² *A Statement of the Society of Apothecaries on the subject of their Administration of the Apothecaries Act* (1844), p. 31.

³ *Ibid.*, p. 30.

⁴ *Report of the Select Committee on Medical Registration* (1847), p. 113.

⁵ Quoted by W. Munk, *The Gold Headed Cane* (1884), p. 229, from *The Gentleman’s Magazine*, Mar. 1834.

by the College of Surgeons were deplorably low.¹ It in no way diminished the confusion arising from the functional and territorial limitations of the licensing powers of the numerous universities and corporations.

It is not surprising that a root-and-branch reform movement came into being. In general the reformers aimed at sweeping away the licensing powers of the ancient corporations and universities and at substituting for them a single licensing authority. It was proposed that a single uniform medical qualification should be created, entitling the holder to practise in any part of the kingdom and in any branch of the profession. The unqualified were to be restrained from practice. A number of voluntary associations of practitioners, including a National Association of General Practitioners, were formed to advocate changes along these lines. Of them only one deserves special mention. The Provincial Medical and Surgical Association was formed at Worcester in 1832. It is not so much on account of the part which it took in this campaign as on account of its remarkable subsequent history that it stands out. In 1856 it assumed the title of the British Medical Association and grew into the most ably conducted and most powerful voluntary professional association that this country has ever known.

The reformers had a strong case. The territorial restrictions on licensing powers could not be defended, nor could a case be put up for a functional division of the profession. At that date medical specialism had not made itself prominent, and it was not possible to point to any special functions which the physicians alone were qualified to perform.² But the opponents were numerous and powerful, and it was no easy task to get behind the defences of the universities and corporations. Among the latter the Society of Apothecaries alone supported reform, but it was a mere parvenu among these dignified bodies. A memorandum of 1844 speaks of 'the Society's concern, as a public body, with the general practitioners of England and Wales' and 'welcomes the establishment of a Council of Health, uniformity of education and reciprocity of practice in the three kingdoms and a general registration of all qualified practitioners'. It goes on to remark that 'in every statute professing to regulate medical practice as a profession, from the reign of Henry VIII to the present time, the practice of unskilful pretenders has been treated as a crime and those engaged in it as

¹ *Address by the Society of Apothecaries to the General Practitioners of England and Wales* (1844), p. 19.

² See *The Report of the Select Committee on Medical Education* (1834), part i, p. 144, for a discussion of this matter.

deserving of punishment'.¹ It urges that the policy of the State in this matter should be made effective.

This agitation led to the appointment of a Select Committee in 1834, and numerous bills were introduced between that date and 1847. In the latter year another Select Committee was set up, following the introduction of a bill in 1846 by Thomas Wakley, whose turbulent career in these troubled years touches every phase of the changing situation.² Other bills followed, and finally in 1858 the Medical Act was passed. This Act remains substantially unamended to-day.

The General Medical Council

The Medical Act of 1858 brought unity to the medical profession. This was achieved, not by clearing the ground and making a new start, but by imposing upon the existing licensing bodies a new controlling authority armed with far-reaching powers. The compromise pleased no one, and the new mechanism took some time to produce results. In consequence the dissatisfied reformers continued for many years to work for the fulfilment of their ideals, and during the next three decades a number of bills were introduced embodying their entire programme. On more than one occasion it seems that a bill failed to become law because it met with a parliamentary accident rather than because of the strength of the opposition. But, as time went on, the new organization moulded the profession into an organic whole, and attacks upon it from this angle ceased.

The Act of 1858 created the General Council of Medical Education and Registration of the United Kingdom, usually known as the General Medical Council. It consisted originally of twenty-three members, nine appointed by the medical corporations, eight by the universities, and six by the Crown with the advice of the Privy Council. The nominees of the medical corporations must be persons registered under the Act, but there is nothing to prevent the nominees of the Crown or of the universities being laymen. Nevertheless, until the appointment in 1926 of Sir E. Hilton Young as one of the nominees of the Crown, no layman had ever sat upon the Council. The Medical Act of 1886 reduced the number of Crown nominees to five and added five 'direct representatives', who must be themselves registered, to be elected by the whole

¹ *An Address by the Society of Apothecaries to the General Practitioners of England and Wales* (1844), pp. 7, 8, and 10.

² See S. Squire Sprigge, *The Life and Times of Thomas Wakley* (1897).

body of registered practitioners. From time to time representation has been given to new universities, and the Council now consists of thirty-eight members, nine appointed by the medical corporations, five by the Crown, eighteen by the universities, and six elected by the practitioners.¹

The G.M.C. is subject to the Privy Council, which may supersede it and exercise its powers, if at any time it appears that the G.M.C. has failed in its duties. The G.M.C. has two main duties, to ensure that the unfit shall not get on to the register and to expunge the unworthy from it. The medical register, set up under the Act, is kept by the G.M.C., though its functions in regard to admittance to the register are purely ministerial. The G.M.C. has no option but to register those who produce a licence from a duly authorized licensing authority and tender the prescribed fee. It is enabled to fulfil its first duty because the Act has given it certain powers over the licensing bodies. It can fulfil its second duty because it is empowered to erase a name from the register under certain circumstances. Its remaining duties are subsidiary, such, for instance, as the compilation of the British Pharmacopoeia.

The G.M.C. neither teaches nor examines. There are bodies which teach, bodies which examine, and bodies which do both. Teaching may be divided into laboratory teaching and hospital teaching, and some institutions provide only one, or part of only one form of instruction. Eighteen universities and nine medical corporations are empowered by statute to grant licences, or, more exactly, registrable qualifications. Universities license by the conferment of medical degrees, and medical corporations license by admitting to membership. A licence is gained by passing an examination; each licensing body makes its own rules regarding the theoretical and practical instruction required before a candidate may sit for an examination. Thus a licensing body may limit examination to those whom it has instructed, or it may examine, if it so pleases, any one who has attended courses at an approved

¹ The Act of 1858 laid down that five members of the G.M.C. should be elected by the registered practitioners. The Act of 1886 contains the following clause: 'The General Council may at any time represent to the Privy Council . . . that it is expedient to confer on the registered medical practitioners resident in any part of the United Kingdom the power of returning an additional member to the General Council' (48 & 49 Vic., c. 48, s. 10). By virtue of this clause provision was made, shortly before the war, for an additional member elected by the practitioners. The advice of counsel has recently been taken as to the interpretation of this clause; it is to the effect that the power, which is given, is not to recommend one additional member only, but to recommend an additional member whenever the need for greater representation is proved. Acting on this advice, the G.M.C. has represented that a seventh representative should be given to the practitioners, and this arrangement will shortly be put in force.

school. The universities, for the most part, examine only those who have followed the courses which they offer. The medical corporations, for the most part, examine any one who has made the required attendances at any approved place of instruction.¹

The Board of Education exercises some control over the system of education. In 1908 the St. Mary's Medical School applied for and obtained a grant from the Board; and since that date grants have been given to other schools. The Board can lay down conditions for the receipt of a grant and thus exercise pressure. But while it can withdraw a grant, it cannot approve or refuse to approve any institution for the purposes of the Medical Act; ultimate authority lies with the G.M.C. under the Privy Council. The G.M.C. may demand information as to the examinations and courses of study 'required to be gone through' under any licensing authority; and any member of the G.M.C., or any person deputed by it, may attend an examination.² If the G.M.C. is of opinion that either the instruction or the examination is unsatisfactory, it may represent the case to the Privy Council, and the Privy Council may suspend the right of licensing. While the G.M.C. can thus obtain the revocation of the licensing powers of any authority, it cannot add to their number. It can also indirectly approve or withhold approval of any purely teaching institution because, if any licensing authority should propose to examine candidates who had studied at any institution where the standard considered necessary was not reached, the G.M.C. could ask for the revocation of its powers. Again, if it appears to the G.M.C. that any licensing body is imposing 'restrictions as to any theory of medicine or surgery', it can make representations that its powers should be revoked.³

The G.M.C. can, therefore, enforce such minimum standards of education and examination as it pleases; but there is nothing to prevent any examining body from demanding more than this minimum. It is clear that a sufficient exercise of these powers must imply the unification of the profession, and in fact unification was thus brought about in the years following 1858. Consolidation was a slow process. It was delayed by a defect in the Act of 1858 which permitted a licence to be given in either medicine or surgery alone. Many persons were of the mind of young Dr. Lydgate in Middlemarch 'to resist the irrational severance of medical and surgical

¹ Under an Act of 1533 the Archbishop of Canterbury can confer degrees—the so-called Lambeth degrees. Under the Medical Act of 1858 a Lambeth medical degree, granted before the passing of the Act, entitled the holder to registration. It is to be inferred that a Lambeth degree, granted after the passing of the Act, does not confer any right to registration.

² 21 & 22 Vic., c. 90, s. 18.

³ *Ibid.*, s. 23.

knowledge'; the Medical Act of 1886 provided the remedy by requiring that the qualifying examination must be one both in medicine and surgery. Apart from this defect it took the G.M.C. a couple of decades to get into its stride. The ancient corporations were at first in no mood to listen to the admonitions of this upstart body, and for some years they snubbed and flouted the G.M.C. with impunity. The authority of the G.M.C. was weakened by the prevalence of the opinion that the new system would not endure. But as the attempts to reshape it failed and as the G.M.C. grew more bold, so it gained in prestige, and some thirty years after its inception it summoned up courage and refused to brook any floutings of its clearly expressed wishes. The authority of the G.M.C. has steadily increased, and without ever having had to invoke the powers of revocation of the Privy Council, it has long been in the position that its word is law.

There have been many who have questioned the educational policy of the G.M.C. on technical grounds, and this is inevitable owing to the numerous debatable matters which arise. But there has been no serious suggestion that the Council has not applied itself with utmost diligence to the changing needs of this most difficult problem of medical education. Nor would any one dispute that its policy has met with a very fair measure of success. The irrational functional divisions have gone and so have the objectionable social gradings. But unification has not meant uniformity. The framers of the Act of 1858, in the attempt to satisfy the claims of conflicting interests and policies, stumbled upon a system which authorized several modes of entry into the profession. This system, which at first satisfied no one, has been proved to have elements of great value. The schools can maintain their individualities, indulge in specialization and engage in healthy rivalries; while the licensing bodies can demand qualifications above the minimum, and attempt to build up for their members a special prestige. Furthermore, by accident rather than by design, the foundations were laid for a system of professional education in which the State, the profession, and the universities share the responsibility.

This peculiar system led to a revival of the ancient university schools of medicine. The growth of the Oxford school was slow, because influential men, such as Acland, desired to develop it as a centre of research rather than of teaching. It permitted the rise of medical schools at the modern universities, and allowed the schools, which had been formed at the hospitals, to continue to train students, who proposed to offer themselves for examination by the

medical corporations. The hospital schools now number twenty-eight, of which about half are in London; some of them are authorized to give only a part of the course required in the first two years of study. The Royal College of Physicians and the Royal College of Surgeons adapted themselves to the new conditions without suffering any fundamental change.¹ These two ancient corporations continue to grant licences to practise. Until 1884 they licensed separately; in that year the conjoint Examining Board was set up, and since that date they have examined together, in consequence of which a licence cannot be obtained without a knowledge both of medicine and surgery. The Society of Apothecaries also continues to grant licences to practise. But whereas the Society now does no more than license, and therefore plays no distinctive part in the medical world, it has become the function of the two former corporations to grant higher and much-sought-after qualifications. After 1858 they set out to win prestige for their senior grades of membership, which have become recognized as the highest qualifications available to members of the profession. The Royal College of Surgeons has one senior grade, namely the fellowship; the Royal College of Physicians has two senior grades, the fellowship and the membership. In the former those who merely possess licences are members and in the latter case are licentiates. The higher grades in the Royal College of Physicians are subject to a higher code of ethics; fellows, for instance, may not sue for fees.

The second main function of the G.M.C. is to expunge the names of the unworthy from the register. Most licensing authorities have power to withdraw a medical qualification, though the four Scottish universities and the universities of Oxford, Cambridge, and Durham cannot do so. But once a name is on the register, the withdrawal of the qualification will not affect the privileges which appertain to registration. The G.M.C. alone is competent to cause a name to be erased from the register, though it has no powers of suspension. If a name has been erased, however, it can only be restored if the person holds a registrable qualification. It follows that such disciplinary powers as the licensing bodies may possess are limited to the withdrawal of such prestige as attaches to membership of their body. On the other hand if a licensing authority has withdrawn a qualification and the name has been erased, it cannot be restored by the G.M.C. until the authority restores the qualification.

¹ The Royal College of Surgeons of London became the Royal College of Surgeons of England in 1843.

The Act lays down the circumstances under which a name may be erased. This step may be taken if a registered person has been found guilty of any felony or misdemeanour, or if a registered person has been found guilty 'after due inquiry' of 'infamous conduct in any professional respect'.¹ But the name of a person may not be erased 'on the ground of his having adopted any theory of medicine or surgery'.² In addition, therefore, to its responsibilities in the sphere of education, the Council functions as a professional court of justice with statutory powers, and from its decision there is no appeal.

The sanction given to the G.M.C. by the Act of 1858 in the exercise of its disciplinary powers does not imply the withdrawal of the right to practise medicine. To the great disappointment of the reformers the attempt to eliminate unqualified practice by making it illegal was abandoned. It seems to have been widely believed, at the time of the passing of the Act of 1858, that clause 40 would have the result desired by the profession as a whole; but this was a total misconception, because this section merely provides penalties for 'wilfully and falsely' pretending to be registered.³ It is true that the section of the Apothecaries Act, which penalizes practice without qualification, remains in force;⁴ but the decisions of the courts have shown that it is not possible to bring ordinary unqualified practice within this clause. Elsewhere in the Act disabilities are imposed upon the unregistered and privileges secured to the registered. Thus only registered persons are entitled to recover charges in any court of law for medical or surgical services, and unregistered persons are not to hold certain medical appointments. Further, no certificate required from a medical practitioner under any Act is valid unless the practitioner is registered. The latter provision makes it necessary to have the signature of a qualified doctor on a death certificate.

Thus the Act of 1858 gave valuable privileges to the registered but left the field of private practice open to the unqualified. No subsequent amendment of the Medical Act has extended these privileges, but the value of registration has been very substantially increased by other Acts passed in recent years. The National Insurance Act of 1911 directed that only registered practitioners shall be accepted on the medical list. The Venereal Diseases

¹ 21 & 22 Vic., c. 90, s. 29.

² *Ibid.*, c. 90, s. 28.

³ *Ibid.*, c. 90, s. 40. See C. J. S. Harper, *Legal Decisions bearing upon the Medical and Dentists Acts* (1912) for a summary of the judicial decisions bearing upon the interpretation of this section.

⁴ See F. Bullock, *Law relating to Medical, Dental, and Veterinary Practice* (1929), p. 108.

Act of 1917 prohibits practice by the unqualified in relation to these diseases wherever the Act has been put into force by the Ministry of Health. The Dangerous Drugs Act of 1920 provides that only registered doctors, dentists, and veterinary surgeons may be in possession of dangerous drugs for the purpose of their practice. Before these Acts came into operation, there was no doubt a large amount of unqualified practice. An inquiry, conducted in 1909 into the conditions in 217 large towns, revealed that in 82 of them unqualified practice was increasing or large in extent, in 75 there was some such practice, in 27 very little, in 30 none, while for 3 there was no information. The report added that 'it is probable that a large number of people among the more ignorant sections of the community are deceived into the belief that the person they consult is, in some way or other, qualified to give medical or surgical advice. . . . Prescribing by chemists is stated to be so common as to be practically universal throughout the country. . . . It is comparatively rarely that a general practitioner sees the child of working-class people until it has been purged and medicined for several days by the prescribing chemist'.¹ The National Health Insurance Act has done much to change these conditions. No doubt the rich have been at all times as good patrons of the quacks and of the charlatans as the poor. But now that the insured population has qualified medical service at its disposal, the petty medicine-man has largely disappeared, and it is his big brother with a fashionable London address who survives to batten upon the rich.

The British Medical Association

The G.M.C. is a body with statutory powers and duties and not a professional association. It is competent to the Council in the performance of its duties to examine any projects for amending the law relating to medical practice and to make its views known to the Privy Council. Thus in 1910 a National Insurance Bill Committee of the G.M.C. was set up and recommended that certain organizations proposed under the bill should include doctors, that medical benefit should be administered by local health committees, and that there should be free choice of doctor by patient. These recommendations were forwarded to the President of the Council; interviews and correspondence followed. But the topics which the G.M.C. is competent to discuss are limited and exclude, for instance, all questions relating to remuneration. The existence of the

¹ *Report as to the Practice of Medicine and Surgery by Unqualified Persons* (1910), Cmd. 5422, pp. 3-5.

G.M.C., therefore, in no way implies that there is not room for voluntary professional organization.

The foundation in 1832 at Worcester of the body which in 1856 assumed the title of the British Medical Association has been noticed.¹ When the decision was taken to form the Association its proposed objects were set out in five clauses. The first four are concerned with study activities and the fifth with 'the maintenance of the honour and respectability of the profession'. Medico-political objects are not expressly mentioned, though it may be held that they are included under the fifth clause. The Association came into being at a propitious moment when the first generation of educated general practitioners was surrounded with problems urgently calling for consideration. The Association with its wide interests offered itself as a meeting-place for discussion and as an instrument for the promotion of agreed policies. It has passed from strength to strength. In 1888 it is called 'the greatest power in the profession'.² Its prestige has grown in recent years until it is often credited with powers that it does not possess. Mr. Herbert Smith is reported to have said at a meeting of the Coal Commission in 1926 that, 'doctors have to be members of the British Medical Association before they can practise'. He is not the only person who has confused the B.M.A. with the G.M.C. The growth in membership was steady and continuous up to the introduction of the National Health Insurance Bill; it then leapt upwards, declined somewhat during the War, and has since increased rapidly. There are about 55,000 names on the medical register, and the membership of the B.M.A. amounts to about 35,000. It is probable that over three-quarters of the medical men in practice in this country are members. From its early days it has completely overshadowed all other professional associations in the field of medicine. Rival associations have sprung up from time to time, but they have never constituted a serious threat to the supremacy of the B.M.A. and have usually enjoyed but a short span of life. At the present time the Medical Practitioners Union is the most important of the other medical professional associations and has between three and four thousand members.

To what is the great success of this Association, which has just celebrated its centenary, to be attributed? Looking back upon its

¹ The history of the B.M.A. has not been written, but an historical sketch will be found in the *Annual Handbook of the British Medical Association*, 1921-2, pp. 83-146. A history has been prepared for the centenary of the Association by Mr. E. Muirhead Little. Extracts have appeared in the *British Medical Journal*, 1931, vol. ii, p. 1053; 1932, vol. i, pp. 27 and 204.

² T. Laffan, *The Medical Profession* (1888), p. 131.

history the persistently skilful leadership makes a strong impression upon any observer. There has been a long succession of unusually able permanent officials and of medical men willing to sacrifice time to the affairs of the Association. Their appearance upon the scene has been facilitated, if not called forth, by the ingenious constitution admirably adapted to the needs of the case. Much care has been expended upon this constitution which in its present form dates from 1902. The local organization of the Association consists of divisions which are grouped in branches. The central organization deserves special notice. In bodies of this kind it is usual to find a council, in which the real power is vested, and a general meeting which is supposed to afford to the members as a whole an opportunity of expressing their views. But these councils are seldom truly representative and in touch with the members, and the general meeting is a cumbersome and untrustworthy method of ascertaining the movement of opinion. The effective control of this Association lies with the Representative Body consisting chiefly of delegates elected by the divisions; it 'determines the policy of the Association'.¹ The Representative Body, the members of which number between two and three hundred, is the parliament of the Association; every important issue is raised at its meetings, the attendance good, and the debates keen. There is thus opportunity for members with a turn for medico-political activities to come forward, and through this mechanism leaders of unusual talents have emerged. There is also a Council, or central executive, to which a minor role is assigned. The members of the Council are chosen partly by a postal vote of all the members and partly by the Representative Body. Finally there is the General Meeting which must be held to comply with the requirements of the law. But to this meeting are assigned the minimum possible functions. The legal status of the Association is that of a limited company 'not for profit'. Though this status is now accepted as satisfactory, it was at one time a matter for debate. During the years 1907 to 1910 the proposal to apply for a charter was much canvassed; when the application was finally made, it was refused. Later the question of registration as a trade union was discussed. The opinion of counsel, however, was that the Association is not eligible for registration on the ground, among others, that in law a trade union is an association of workmen or of masters, and that doctors can hardly be considered as workmen and certainly not as masters.

To the excellence of the constitution as a factor in success may be added other favourable circumstances. Owing to various causes

¹ *British Medical Association: Annual Handbook* (1927-8), p. 91.

doctors feel somewhat isolated from the rest of the community and therefore disposed to associate with their fellow professionals. To a greater degree than the members of most other professions they feel the need for interchange of opinion and for opportunity of hearing about recent developments in technique. It must also be remembered that, when the Association was first formed, and for many years afterwards, the social status of the majority of practitioners was very low, and that the B.M.A. offered a means of raising their status. Finally public health organization is often a matter for debate, and since any proposal for reforming health services involves changes in the position of doctors, it is only to be expected that they should be drawn towards an organization which can put their view of the matter.

What use has this powerful body made of its opportunities? It must be remembered that the existence of the G.M.C. removes the education and discipline of the profession out of the province of any voluntary association. The B.M.A. can only attempt indirectly to influence policy in these matters. It can work through the 'direct representatives'. The latter are representatives of the whole profession, but so powerful is the B.M.A., that the candidates whom it supports are invariably elected. It can also formulate policies and press them upon the G.M.C. It has not displayed great concern with education, but it has frequently busied itself with discipline. On the one hand it has pressed the G.M.C. to make greater use of its disciplinary powers; thus in 1905 the Council issued a 'Warning Notice' against advertisement after representation from the B.M.A., and in 1922 it amended and strengthened the notice in response to further representation. On the other hand the Association has dealt with minor matters of conduct that fall outside the sphere of the G.M.C., and through its Central Ethical Committee established in 1902, it has framed a code of etiquette.¹

The Association early developed study activities. The weekly *British Medical Journal* is a publication of the first importance in the field of medical science. There are standing committees, and at any one time, usually *ad hoc* committees devoted to the investigation of medical problems. Considerable sums have been spent upon the promotion of research. The contribution of the B.M.A. to medical science and practice cannot easily be over-estimated. If no more is said here about the work of the B.M.A. in this direction, it is because study activities lie without our province. It should not be supposed that because the medico-political activities of the Association, now to be described, occupy so much of our

¹ For this code of rules see Appendix IV.

space, they occupy a proportionate part of the activities of the Association.

The B.M.A. would no doubt claim that its activities in relation to status and remuneration cannot be dissociated from its activities in relation to public health, on the ground that there cannot be an efficient health service so long as doctors work under hampering conditions and are not properly remunerated. However that may be, it is certainly difficult in any historical sketch to disentangle the former activities from the latter, and in what there is to be said here relating to these matters, no attempt will be made to do so. In 1837 a Medical Reform Committee was set up, and for the first twenty-five years of its existence the medico-political activities of the Association were largely, though by no means wholly, directed towards reform of law governing medical practice. It has been remarked that the Act of 1858 'would never have been passed but for the Association'.¹ Of this event enough has already been said. Since the passage of the Act the B.M.A. has pressed for certain amendments, and in particular for a larger representation of practitioners on the G.M.C.; but during the present century it has not put in the forefront of its programme any proposal for changes in the legal regulation of the profession. Apart from the question of representation, there seems to be fairly general satisfaction with the system as it stands. Furthermore, in the view of the profession there are reasons against pressing for any amendments in the law, however desirable. During the discussion of any bill it is likely that proposals would be made to introduce changes which the profession does not favour, and any attempt to amend the law might, therefore, end by changing it in a direction that the profession would not like.

During the earlier part of the last century the medical needs of the poor were met, so far as they were met at all, by free dispensaries. Later came the growth of the out-patients departments of hospitals and of medical-aid institutions. These latter institutions assumed a form to which the profession took strong exception. A lay committee, generally consisting of persons entirely ignorant of professional standards and of the nature of medical services, hired doctors as cheaply as they could, advertised and canvassed to increase their clientele, and imposed patients upon their medical servants in such numbers and under such conditions as to render honest and efficient service impossible. These arrangements struck at the reasonable freedom of the doctor in relation to his professional duties and indirectly involved advertising. In consequence the Association found itself involved in what became known as 'the

¹ T. Laffan, *op. cit.*, p. 133.

battle of the clubs'. In 1894 the G.M.C., as the result of an inquiry, reported strongly against the system, and eventually ruled that it was unprofessional for a registered doctor to be connected with a canvassing institution. This was the turning-point in this phase of the battle, though institutions, something after the same pattern, have continued to exist, especially in South Wales, and notices can often be found in the *British Medical Journal* warning members against accepting service with them.

Another phase of the same battle opened when the friendly societies began to employ some of the methods of the medical-aid institutions, and from about 1900 to 1911 the B.M.A. was committed to wrestling with this problem. 'For years past', wrote the *British Medical Journal* in the latter year, 'the relations between the societies and the profession have been anything but cordial'.¹ As a result of these difficulties and controversies it was borne in upon the profession that a public medical service was inevitable, and a scheme for such a service was under consideration by the Association when the National Health Insurance Bill was introduced. In its original form the bill placed the control of medical benefit in the hands of the friendly societies, did not allow for free choice of doctor by patient, and did not provide any committees upon which the profession was represented. In other words, the bill proposed to perpetuate in a scheme of state medical service just those conditions against which the Association was contending in its dispute with the friendly societies.

During the passage of the bill the B.M.A. was very active, and succeeded in obtaining amendments satisfactory to itself in respect of these points. The bill as passed in 1911 left the question of the doctors' remuneration unsettled and as a subject for negotiation. The Act came into operation on 15th July, 1912, while medical benefit began on 15th January, 1913. Negotiations proceeded during 1912. The Government had originally offered 4s. 6d. per annum as a basic capitation fee, equal, perhaps, to 6s. in all. By December 1911 the Association had obtained an offer of from 6s. to 7s. 6d. per head. The extent of this concession is all the more surprising in view of the report made by Sir William Plender during the negotiations. By agreement he examined the books of medical men in five representative towns, and found that the average annual cost of visits, consultations, and drugs for all classes of the population amounted to 4s. 2d. Nevertheless on 21st December the Representative Body decided to hold out for 8s. 6d., and to call upon the 26,000 practitioners, who had signed an under-

¹ *British Medical Journal* (1911), vol. ii, p. 385.

taking not to accept service under the Act except under conditions approved by the Association, to keep their promise. The Government conceded no more. The mass of the practitioners evidently thought that it had conceded enough. By 10th January, 1913, some 15,000 practitioners had intimated their willingness to serve, and at a special meeting of the Representative Body on 18th January, 1913, the members were perforce released from their undertaking.

This incident has been recalled at some length because at the time it created more stir among the public than any other happening in the history of the B.M.A. There is now general agreement that the Association was right in claiming the conditions for which it fought otherwise than in respect of remuneration. Opinion has turned against the incorporation of the approved societies in the scheme even with reduced functions. But the same cannot be said of the financial claims, either in regard to their amount or to the method of demanding them. But the peculiar circumstances of the time must be remembered. Those were the hysterical days of Ulster, of gallopers, and of duchesses who would never lick stamps. It seems that the Association was captured by persons who allowed it to be used as a stick with which to beat the government of the day. Every move of the Association was lauded by the opposition newspapers. Sir Victor Horsley and others, who for years had been prominent as supporters of an advanced policy, opposed the action of the Association in its final stages.¹ As the event showed, the leaders went far beyond the point where the rank and file wished to follow—a phenomenon that could be paralleled in the history of trade unionism when the leaders have allowed themselves to be influenced by political objectives. The incident is not one of which the Association has any cause to be proud; but only a wider study of its activities can show whether the incident is typical or exceptional.

The method employed during the Insurance Bill fight was collective bargaining. Those who employ this method commonly augment it by obtaining a tacit or binding understanding that the persons, on whose behalf the bargaining is conducted, will be prepared to take further concerted action if sufficiently good terms cannot be obtained. This further step was taken by the Association; but those doctors, who dislike the reproach of having used the 'strike weapon', have emphasized that the Association was

¹ To appreciate the hysterical atmosphere in which the final stages of this controversy were conducted, see an account of a mass meeting held in the Queen's Hall: "The chairman, again intervening, said he must ask for fair play. The only response was cries of "traitor" apparently directed against Sir Victor Horsley' (*British Medical Journal* (1911), vol. ii, Supplement, p. 663).

prepared to set up and work a public-health service fashioned to their approval. This is true and relevant, but whether it can be said to remove their action from the scope of the term 'strike threat' is doubtful.

Since 1911 the system of collective bargaining has been elaborated. The Insurance Acts Committee of the Association is recognized by the Ministry of Health for this purpose. It consists of 37 members, of whom 5 are *ex officio*, 5 elected by the Representative Body, 23 by the Local Medical and Panel Committees, and 4 by other bodies. The members of the local Medical and Panel Committees need not be members of the Association, and in this manner the difficulty is got over which is created by the fact that, since all panel doctors are not members of the Association, it cannot act without some special arrangement as their official mouthpiece. There have been frequent negotiations by means of this recognized machinery. In 1920 and again in 1924, on the occasions of a general revision of the terms, the matter was submitted by agreement to arbitration by specially appointed boards of arbitrators. In 1920 the Government began by offering 8s. 9d., subsequently raising the figure to 11s. The Association claimed 13s. 6d., and the award was 11s. In 1924 the Government offered 8s. 6d., and the Association claimed not less than 9s. 6d. The award was 9s. On the latter occasion there was a virtual threat to strike, and conditional resignations were handed in by 95 per cent. of the insurance practitioners. On these occasions the event did not show whether the Association had the whole-hearted support of the practitioners behind it; but the awards of the very skilled and experienced arbitrators, together with the evidence that will presently be produced as to the relatively high level of medical incomes, tend to suggest that the Association put its claims high.

The Association spent over £30,000 in connexion with the National Health Insurance Bill controversy apart from money raised by special funds. In addition to collective bargaining, the mechanism of which in relation to the National Health Insurance scheme has now become elaborated and regularized, the B.M.A. employs the 'black list'. It refuses to accept for the *British Medical Journal* advertisements of posts where conditions are unsatisfactory, and it inserts in this weekly journal 'important notices' warning members that they should make inquiries before applying for posts under certain authorities. Since 1905 the Association has maintained a Central Emergency Fund to provide 'personal help to individuals or bodies of members who are suffering because of their support of the policy of the British Medical Association, and on

several occasions the Association has thus been enabled to succeed in important struggles by timely help given out of this fund'. 'For obvious reasons', adds the official statement, 'it is inadvisable to give particulars of the help thus rendered, but it may be said that recently grants have been made to doctors who are fighting the battles of the profession in connexion with a dispute the successful issue of which is of great importance to the Association'.¹

The Association has never much concerned itself with fees charged to private patients. They vary from district to district and from house to house. It is usual for the Honorary Secretary of the Local Division to keep a scale of fees that he will supply to any member on request. The Representative Body in 1919 passed a resolution to the effect that an increase of at least 50 per cent. in fees was justified, and activity in relation to fees to private patients is limited to steps of this nature. It would not seem that the under-cutting of fees has ever been a serious cause of friction in the profession. On the other hand, in relation to salaries and fees for public work, its vigilance is unsleeping. If a doctor is paid third-class fare for attendance at a court martial as witness, the horrid scandal is taken up with the War Office by the Medico-Political Committee of the Association and pursued relentlessly until the War Office is made to see the error of its ways.

There are three main fields of activity in relation to remuneration: the pay and status of medical officers in the services and under local authorities, and of practitioners under the National Health Insurance scheme. Of the latter something has already been said. Efforts to improve the conditions of medical officers in the services have been more or less continuous since 1850. The fight to gain army rank and military titles was very arduous and prolonged. The point was finally won after a report on the alleged unsatisfactory conditions in the Army had been sent to the Dean of every medical school asking that it might be brought to the notice of every man who contemplated entering the service. The case of the Poor Law Medical Officers, who were encouraged to form their own association, was taken up in 1846. The B.M.A. maintained close relations with the association formed on their advice and acted as its mouth-piece in negotiations with the authorities. In recent times the Association has been much occupied with the remuneration of medical officers of health. When a salary scale was under consideration, the Society of Medical Officers of Health was at first inclined to press for higher salaries than the Association was able to support. In 1925 the Association and the Society agreed upon

¹ *British Medical Journal* (1923), vol. i, Supplement, p. 1.

a 'scale of minimum commencing salaries' for full-time medical officers. The scheme received the general approval of the Ministry of Health and was put into operation 'with a large measure of success'.¹ But the scale was found by the profession to be not 'entirely satisfactory. For instance, it was not retrospective.'² Therefore a conference was arranged under the chairmanship of Lord Askwith, and an amended scale produced and put in force in June 1930. Though it has been accepted in its amended form by most types of local authority, many county councils are at the moment standing out. This scale, which is elaborately graded, is being enforced by the method of the black list. 'The advertisements of local authorities who are not prepared to put into effect the whole of the recommendations will not be published by the *British Medical Journal* which in this matter will have the co-operation of the *Lancet* and the *Medical Officer*'.³

These methods have met with a large degree of success. Between June 1926 and June 1927 the Association dealt with 180 vacancies in public health posts which were advertised under the minimum scale. In 101 of these cases the salary scale was finally obtained. Much publicity has attended this form of activity when, as for instance in the case of Manchester, important corporations have attempted to obtain a medical officer at a salary under the scale. On one of these occasions a person described as 'a local labour leader' is reported to have said at a meeting of the Wallasey Borough Council that 'the danger of trade unionism among doctors was not sufficiently recognized'. This success is primarily due to the fact that the use of the black list seriously limits the number of desirable candidates if it does not result in the failure of any properly qualified candidate to appear. The working of the system is illustrated by the following quotation:

'In March of this year the Worcestershire County Council submitted for publication in the *British Medical Journal* an advertisement for seven assistant school medical officers. No salary was mentioned, but it is known that the proposed salary was £450 per annum. The attention of the Clerk of the County Council was called to the fact that no salary was stated, and that unless a salary of £500 a year was given, the advertisement could not be published. About the same time the Council submitted an advertisement for an assistant county medical officer and school oculist at £450 per annum. At the instance of the Division this advertisement was also refused, and an "Important Notice" put in the Advertisement pages of the *Journal*. In April the chairman of the Worcestershire County Council had to explain to a meeting of his

¹ *British Medical Journal* (1930), vol. ii, p. 392.

² *Ibid.*

³ *Ibid.*

Council that the medical press would not publish advertisements for these posts under £500 per annum, and after a long discussion it decided to advertise in the lay press. The result was not encouraging, for the Chairman of the Council is reported to have stated at a subsequent meeting that, although he had received a considerable number of replies, he was sorry to say that the persons were not suitable. At that meeting power was given to go beyond £450. On 14th September an advertisement was received from the Worcestershire County Council offering a salary of £550, rising by £15 a year to £600, for a school oculist.¹

The persistent and skilful use of these methods, backed by the approval and loyalty, sometimes doubtful and hesitating but sufficient, of the great majority of the profession, has had a profound effect upon the status and remuneration of doctors. Something has been said of the standing of the general practitioner before 1850. Later in the century, when young Dr. Lydgate, 'who had been drawn to a study of medicine—a study then considered unworthy of his class'—arrived in Middlesmarch, he was told by Mr. Bulstrode, the banker, that 'the standard of that [i.e. the medical] profession is low in Middlesmarch. . . . I mean in knowledge and skill, not in social status, for our medical men are most of them connected with respectable townspeople here'. Nowadays we are told on the authority of the Association itself that 'a family doctor . . . occupies an excellent position among his neighbours'.² But it is not the cold comfort of esteem unaccompanied by material satisfactions. There is little evidence regarding the average income of the general practitioner. Dr. H. B. Brackenbury said in evidence at the arbitration inquiry in 1924 that £1,200 might be the average income from a successful practice 'not at the top'.³ The Medical Practitioners Union, as the result of a questionnaire to which 305 replies were received, gave an average figure of £1,394 gross income and of £561 for expenses including rent, car, and wages.⁴ It is widely believed that these figures are underestimates. It is significant that the Association is able to obtain a minimum commencing salary of £600 a year for a whole-time medical officer of the lowest grade, and that, in spite of the attractions of fixed hours and superannuation, there is no rush of candidates for these posts. The fact that the salaries offered for medical men are considerably higher than those for dentists or for veterinary surgeons is also worthy of note.

¹ *British Medical Journal* (1920), vol. ii, Supplement, p. 81.

² *Ibid.* (1927), vol. ii, p. 384.

³ *Ibid.* (1924), vol. i, Supplement, p. 32.

⁴ *National Health Insurance Commission*, Appendix to Minutes of Evidence (1924), p. 479.

On the other hand the long compulsory training—now six years—costing at least £1,500, has to be borne in mind.¹ Of this sum between two-thirds and three-quarters are spent on maintenance. It is seldom that the earnings are substantial in the years immediately following qualification. If public service is aimed at, an officer in the lowest grade at £600 a year must have had three years' experience after qualifying, one of which may be spent as a probationary officer at a salary of not less than £500 a year. If the aim is consulting work, the period during which the salary is low may be prolonged. If the line taken is that of general practice, which is that followed by about three-quarters of the profession, either a new practice must be built up, which involves waiting, or an existing practice or a partnership must be purchased. 'The purchase price is usually based upon the average gross income of the preceding three years. . . . An average price to pay is one and a half years' income.'²

In all these controversies questions of remuneration and of policy in relation to the public were intermingled. An erroneous impression would be created if it was made to appear that the B.M.A. is never active in regard to health services except when remuneration is involved. In the year following its foundation the Association began to agitate for official registration of births, deaths, and marriages, which was brought into operation in 1836. At the third annual meeting in 1835 a committee was appointed to consider the best means of meeting the needs of the sick poor. At about the same time it began an agitation for free vaccination for all classes of the community. It was largely as a result of the activities of the Association that the Vaccination Act of 1840 was passed. In 1847 the Association set up, jointly with the Social Science Association, a State Medical Committee, and this Committee played a part in bringing about the institution of the General Board of Health in 1848 and the inauguration of other similar reforms. Later the work of the State Medical Committee passed to the Parliamentary Bills Committee of the Association and in 1902 to the Public Health Committee. Since 1856 a special section of the annual meeting of the Association has been devoted to public health problems. It would be tedious to enumerate even the more important matters which have been reviewed and concerning which recommendations have been made. Mention may be made, however, of the advocacy of the notification of diseases and of the establishment of a diploma in public health. An investigation was

¹ See the *British Medical Journal* (1931), vol. ii, p. 415.

² *Handbook for Recently Qualified Medical Practitioners* (1926), p. 37.

promoted and financed into the health of 100,000 school children, and this prepared the way for the medical inspection of school children. Following upon this the Association became much occupied with the extension of maternity and child welfare work. Of late years it has become involved in all those problems connected with health insurance. It will be remembered that a scheme for medical attention, available to all those whose income fell below a certain limit, had been prepared when the National Health Insurance Bill was introduced in 1910. Its proposals are now confined within the limits of possible improvements and extensions of the existing system.

A speaker at a meeting of the Fabian Society in 1927 is reported to have said, 'Whenever you see a statement on public policy by the British Medical Association you always know that they are considering the private pockets of the doctors who are their members, and are never in the least degree interested in public welfare. I do not think that there is a single exception where for a quarter or half a second the British Medical Association has ever put aside the pecuniary interests of its members for the sake of an improvement in public health.'¹ These remarks serve to show the impression which the activities of the Association have made upon a section of the public. In fairness to the B.M.A. it should be said at once that those who make these criticisms forget, if indeed they have ever heard of, its study activities. If the charges are examined in more detail it will be found that they may be summarized somewhat as follows. Proposals for the reform of the health services are only made when it is evident that something is going to be done, and they are then framed so as to improve or at least to safeguard the financial position of the profession. Enough has been said to show the first part of the charge will not stand without considerable modification. It is not claimed by the Association that it is a health service reform league or even that the main pressure for reform has come from within the Association. But it has made its contributions. As regards the second part of the charge, the B.M.A. takes infinite pride in the improvement which it has effected in the financial position of the profession. The question is whether this improvement has been at the expense of the public. Has the public been held up to ransom? Some material upon which to base an answer is already at hand. But it is not enough to have the salaries demanded and the methods used to obtain them. Remuneration can also be enhanced by maintaining, at the expense of the public, profitable fields of practice for exploitation. At the present time there are

¹ Quoted by the *British Medical Journal* (1927), vol. i, Supplement, p. 81.

three cases where the attitude of the profession may be examined. The B.M.A. has issued proposals for the reform of the public health services, and it is alleged that the insistence upon the retention of private practice is due to the desire to retain that lucrative field for the profession. Secondly, the Association has debated the question of clinics for the children of persons of moderate means, and thirdly, it has considered the question of providing ophthalmic services for the population as a whole. In both these latter cases it is again suggested that the attitude of the Association is governed by self-regarding motives. When these cases have been considered later in the appropriate place, together with similar matters relating to other professions, it will be possible to attempt to form a judgement concerning the Association.

The B.M.A. includes in its membership a large proportion of all practising doctors and has no rival. But this does not mean that there is no criticism of the Association within the profession.¹ Not a few medical men in each generation have been uneasy about the policy of the Association. There is and there has long been an undercurrent of opinion that its forceful, unsleeping, and ubiquitous activities are undignified, if indeed they are not deserving of more definite censure. It may be that criticism of this kind is the price which any active organization must pay, or it may be that the Association tends to overstep the bounds of what is legitimate for a professional association and to concentrate too exclusively upon the material rewards of its members.

The Profession of Medicine

The profession of medicine, as we know it to-day, is moulded by the statutory organization brought into being by the Act of 1858, and by that voluntary organization, created by the practitioners, which has just been considered. Criticism of the profession has long been widespread. Self-regarding motives, as we have just seen, are imputed to the B.M.A. in all its activities. The public complains that medical etiquette, at all times irritating and unnecessary, is often positively disadvantageous to the client. It is said that the profession is conservative in its methods and delays the adoption of new techniques. More especially the profession is accused of obscurantism in relation to the better social organization of the health services. Suspicion and even hostility are almost universal among laymen who think that a privileged and sheltered

¹ See, for instance, some remarks by Sir Bertrand Dawson, *The Nation's* ... *The Future of the Medical Profession* (1918), p. 9.

profession abuses its position. They are confirmed in this frame of mind because it proves to be so difficult to 'get at' the doctors. They are so powerful and well organized. Charges of this nature are also made against other professions, and it will be convenient to review them together in a later section of this book. But there are features of the situation which are peculiar to the medical profession, and something may be said of them here, in order that when the charges against the doctors are discussed, they may be seen in their proper setting.

There is a tendency towards the segregation of medical students at an early age. The separation is emotional and not physical. It may be explained in part by the profound impression which is made by initiation at a receptive age into human anatomy and other mysteries of our animal nature. Unfortunately the study of man in society finds no place in the curriculum, and it is no easy task for a student, hard pressed through five or six years of intensive study, to gain any appreciation of the relation of his profession to society. Men belonging to a somewhat isolated and self-conscious group, having passed through intense but narrow experiences, are called upon to ply their art at the most anxious moments in the lives of ordinary men and women. Thus there is likelihood of trouble at the outset.

The function of the doctor is to advise how the body may be kept in health and how it may be restored to health. The public has no grasp of the complexity of the problem presented by the effort to understand the normal bodily processes. The study of physiology is in its infancy. The discovery of so fundamental a matter as the part played by the glands of internal secretion is as of yesterday. The study of abnormal states, with which the doctor has mostly to deal, cannot advance far until the normal is better understood. It follows that the doctor is only too often compelled to make a shot in the dark. Indeed, the client of the doctor often asks that he should try and perform the impossible, and the doctor must make the attempt. Further, his advice is sought by people who are suffering and apprehensive and who are little in the mood to exercise what patience and judgement they possess. The client of the doctor is a sick man, likely to be agitated and impatient, which is not normally the case with the clients of other professions. Even if the patient did understand the necessary limitations of medical skill and the difficulties of its application, he would not be an easy client. But he does not in the least understand them, and an educated patient may run off to a quack with the technique of an alchemist and the outlook of an astrologer who lacks even the

virtue of any belief in the value of his methods. This is in marked contrast to what obtains elsewhere. An uneducated man would be unlikely to go outside the ranks of qualified engineers if he wanted to have a bridge built.

The doctor, aware that an essential requisite of successful treatment is to acquire and retain the confidence of his patient, and believing that the patient is incapable of appreciating the situation of the art of medicine, tends to a pompous assumption of knowledge and authority. He surrounds himself with an atmosphere of mystery and miracle. It is only too easy for the quack to imitate the doctor in these respects, with the result that the public sees no difference between the qualified and the unqualified practitioner. The unqualified man may be at a positive advantage. He is not hampered by any restrictions upon advertising. Dr. Axel Munthe tells us that on one occasion, when the fashionable quack was more than usually abundant in Paris, the authorities required all practising doctors to deposit their qualifications. Dr. Munthe and his colleagues were no little amused when on the last day to comply with the order a prominent practitioner, whom all thought to be unqualified, deposited excellent qualifications, which he implored might be kept dark, since his very lucrative practice depended upon the fact that his clients thought him to be without that contamination. Mr. Bernard Shaw writes to the papers to tell us that 'unregistered practitioners are at a heavy premium because they have mastered the modern technique of which registration guarantees ignorance.'¹ The public applauds; and the doctors, puzzled and offended, retire behind their barricades.

This fundamental misunderstanding between doctor and patient is the source of much trouble. On the one side we have offended dignity, and on the other unpleasant innuendos and intemperate accusations.² The situation is such that, on examining the charges, we may expect to find less fire than all this smoke suggests. The doctors, however, are not absolved from standing at the bar and answering carefully stated criticisms of their attitude and policy: If there is found to be substance in these charges, then the situation

¹ Quoted by *The Saturday Review*, 13th Oct. 1928, p. 463.

² A well-known weekly review recently published an article in which a calculation was made of the total amount received in fees by surgeons for operations on patients with cancer. The surgeons were directly charged with failing to advise their patients to have radium treatment because it would result in cutting off this source of income. In 1926 an evening paper wrote as follows: 'The B.M.A. does not like the [New Health] Society, for its motto is prevention rather than cure. To preach "health without doctors" is the unforgivable sin to the medical monopolists who in the past have imposed a very rigid etiquette of secretiveness on their close profession.'

just discussed still has relevance. It may provide some explanation, though not an excuse. It is asking much of a profession to live up to the highest ideals in the midst of misunderstanding and even of calumny.

The criticism of the medical profession largely centres round its attitude to unqualified practitioners and to public health services. There are two aspects of the art of medicine which have considerable importance in relation to these controversies. The first is that the primary, most important and perhaps most difficult duty of the doctor is to diagnose. In other professions there is relatively little diagnosis; the client himself takes the preliminary steps and comes to the practitioner for treatment. He knows that he wants a house of a certain kind, or he has determined to dispose of his property at death in a particular fashion. The adviser may have to push the diagnosis further and to make it more specific. But that is not a task of much difficulty, whereas in the case of the doctor it is often of baffling complexity. Ability to make a medical diagnosis can only be acquired as the result of prolonged and systematic training and experience. There is no short cut through gifts of intuition alone, and the medical profession is on sure ground when it finds nothing but danger in attempted diagnosis by the untrained.

It is another question when we come to treatment. At any one time there are two classes of unqualified practitioners—those who are as unfitted to treat as they are to diagnose, that is the quacks, and those who are skilful in some specialized form of treatment but whose capacities end there. It is desirable that the latter should not only be able to offer their services as is now the case, but that they should be recognized in such a fashion that their services may be integrated with those of the registered practitioner. In all this tangled controversy about the unqualified, the one important issue is the attitude of the medical profession towards this latter class of person. It is possible to discern two types among these persons with some special but limited form of skill. There are those who possess an art which can be learnt by any intelligent man or woman—opticians, masseurs, biophysical assistants, nurses, midwives, and so on. It is commonly said that the doctors have been jealous of according them anything but a very inferior form of recognition, and then only in some cases, and that, to use the language which has been employed by medical men themselves, they fear the rise of an 'inferior order of medical practitioners'. There is here a definite allegation that the profession, actuated by fear of losing remunerative practice, has exerted its influence to discourage the systematic and better training of these people which would lead to their

official recognition and incorporation within the scheme of medical service available to the public. This is a charge which must be met and which we shall presently discuss.

There is a second type of unqualified person, unfortunately only too scarce, who possesses a form of skill that cannot be learnt. Sir Herbert Barker was thought by many to have been endowed with a manipulative facility of the utmost value in certain cases of injury. The facility appears to have been inherited; in any case he was never taught to exercise it, and he only became aware of it by chance, and it is significant that he was completely unable to teach it to any one else. Let us suppose that all which was claimed for him was true. Sometimes a man with these gifts from heaven qualifies as a doctor and then there is no more to be said. But Sir Herbert Barker did not qualify, and his wonderful gifts in no way rendered him a fit and proper person to diagnose. There was no substance in the demand that he should be recognized as a doctor and given a medical degree. But it was most important from the point of view of the public that suitable cases should be referred freely and willingly to him, and the question at issue here is the attitude of the profession towards incorporating his talents into the scheme.

The other peculiar aspect of the art of medicine, to which reference was made above, is the advantage which the practitioner gains from an intimate knowledge of his client. It is not quite true to say that to a lawyer or an architect his client is merely X or Y. It is desirable for any professional man to study his client, but the study need not go far below the surface. The doctor, on the other hand, can be much helped in making his diagnosis, if he knows the whole man—habits, foibles, past and present surroundings, and so on. It is a counsel of perfection, no doubt, that every one should have a medical adviser, but it is not an ideal lightly to be dropped. There is thus more in the hesitation or even opposition which doctors exhibit, when proposals are made for the extension of state medical services, than is often realized. When these proposals take the form of calculating that what is wanted to meet a certain need is a clinic and so many doctors seeing so many patients each in so many minutes, it is clear that a very important aspect of the ideal medical treatment has been forgotten or has never been grasped. It is perfectly proper that the profession should protest that doctoring is not a mere mechanical application of cures. The question, however, is whether the protests do not go beyond the case and are not mere pretexts for offering opposition to conditions which, on the balance in an imperfect world, do benefit the mass of the public but reduce the emoluments and amenities of the doctor.

DENTISTS

It has been said of Sir John Tomes (born 1815, died 1895) that he 'began to practise dentistry when it was a trade and left it a well equipped profession'.¹ This transformation may be placed in the 'eighties of the last century. In 1878 the *British Medical Journal* could write as follows: 'Medicine is a profession; dentistry is largely a business'.² Sir Donald Macalister observed in 1919 that 'dentistry was originally put under the Medical Council [in 1878] because there was no dental profession'.³ But though the profession of dentistry arose in the time of our fathers, the art of dentistry was practised many generations ago. Dentistry is, in fact, remarkable among professions for the relatively very long interval which elapsed between the development of the art and the organization and recognition of its practitioners.

It was in the seventeenth century that tooth-drawing became something more than a crude mechanical operation. In 1686 Charles Allen published in Dublin *The Operator for the Teeth*; and it is generally supposed that those more skilled operators, who studied this and other books, were barber-surgeons. It will be remembered that the Act of 1540 united the Barbers and the Surgeons, but kept separate the functions of barber and surgeon, the former practising no surgery except the extraction of teeth. Shaving and tooth-drawing went together. About 1700 we meet with 'operators for the teeth' employing some fair degree of skill. Mrs. Lilian Lindsay has recently given reasons for believing that these 'operators' were descended neither from the upper nor the lower section of Barber-Surgeons but were of independent origin.⁴ However that may be, there were skilled 'operators for the teeth' in the eighteenth century. Mrs. Lindsay has given an account of a dental practice which was founded in London in 1701 by John Watts, who was joined by Samuel Rutter in 1723, and by William Green in 1744; the latter was appointed 'operator for the teeth' to George II.⁵ The most famous member of the firm was Thomas

¹ *D.N.B.* article, 'Sir John Tomes'. Tomes was knighted in 1886 for professional services and was the first dentist to be so honoured. The first occasion on which a member of a profession is thus honoured gives some indication of the period when a profession reaches a certain standard of respectability. The first surgeon to be so honoured was apparently Sir Caesar Hawkins in 1778, the first engineer Sir Marc Brunel in 1841, the first pharmacist Sir W. Glyn-Jones, in 1919.

² *British Medical Journal* (1878), p. 307.
³ *Report of the Departmental Committee on the Dentists Act, 1878* (1919), Cmd. 33, p. 43.

⁴ Lilian Lindsay, 'Notes on the History of Dentistry', *British Dental Journal*, vol. xlviii (1927), p. 268. 'Thomas Berdmore', *ibid.*, vol. xlix (1928), p. 225.

⁵ It is interesting to note that the firm discontinued advertising in 1751.

Berdmore, who succeeded to the Royal appointment in 1766. He was buried at Nottingham in 1785, and the memorial tablet records that he 'acquired a liberal and ample fortune by the profession of dentist'. According to Mrs. Lindsay, Berdmore composed the inscription in which 'by tooth drawing' originally stood in the place of 'by the profession of dentist'.¹ The term 'dentist', which was derived from the French *chirurgien-dentiste*, was slow in making headway. In 1759 the *Edinburgh Chronicle* remarked that the title dentist 'may be well enough for a French puffer but we fancy Rutter is content with being called a "tooth drawer"'.²

In the latter half of the eighteenth century important contributions were made to the scientific study of the teeth and to the art of dental surgery. John Hunter published his *Natural History of the Teeth* in 1771, and in 1768 Berdmore produced his book on dental practice, which continued to be re-edited until the middle of the last century. In 1782 William Rae gave the first lectures on dentistry in this country, and in 1799 Joseph Fox was appointed dental surgeon to Guy's Hospital, where the first organized attempt was made to teach dentistry. He was succeeded in 1817 by Thomas Bell, who was president of the Linnean Society in 1858, and in that capacity presided over the famous Darwin-Wallace meeting. In spite, however, of the rise of an art of dental surgery and of the presence of skilled practitioners, some of whom were well known for their wide scientific achievements, no dental profession evolved. This is to be explained by the fact that the practitioners fell into two sections. There was a small group of educated men, holding medical and surgical qualifications, who specialized in dentistry, and a large group of uneducated and unqualified persons attracting clients by blatant advertising. The former recoiled from the society and methods of the latter; but instead of attempting to form the nucleus of a dental profession, they took shelter in the medical and surgical corporations, regarding themselves rather as surgeons specializing in dentistry than as dentists.

The movement for reform may be said to have begun in 1841, when George Waite published an able pamphlet.³ 'As it now is,' he said, 'dentistry can be considered no profession.' He proposed that 'no persons be permitted hereafter to practise without having undergone examination by one or more censors of the Royal College of Surgeons'. He would like to have seen the 'germ of a society' which might some day get a Royal Charter. In 1842 there

¹ *British Dental Journal*, vol. xlix (1928), p. 238.

² Quoted by the O.E.D. under 'Dentist'.

³ George Waite, *An Appeal to Parliament, the Medical Profession and the Public on the Present State of Dental Surgery*, 1841.

was an unsuccessful attempt to form a dental society, and in 1843, when a medical reform bill was before Parliament, an appeal was made to the Royal College of Surgeons for assistance to bring dentists within its provisions.¹ Nothing came of these movements, and it was not until some ten years later that activity was again shown. From this time onwards Tomes began to play a leading part. He was apprenticed to an apothecary in Evesham in 1831, and after studying at King's College medical school, became house surgeon at the Middlesex Hospital. He was admitted to the Royal College of Surgeons in 1839, and later began to specialize in dental surgery. In 1850 he was made a fellow of the Royal Society. In addition to being a highly skilled practitioner, he was an original scientific investigator; further, he had a liking and a capacity for public work. In 1843 he joined with the other memorialists to the Royal College of Surgeons, and in 1855 he became a member of a group of eighteen leading dentists, who again memorialized the College and at the same time formed themselves into the Odontological Society. The appeal was once more unsuccessful. Meanwhile another group of leading practitioners, under the inspiration of Samuel Rymer, advocated the rival policy of an independent college granting its own diploma, and formed the College of Dentists in 1857. The College was merged in the Odontological Society in 1863, after the latter body had succeeded in inducing the Royal College of Surgeons to obtain powers to grant a licence in dental surgery.

The granting of the first licence in dental surgery by the Royal College of Surgeons in 1859 was a step forward. It brought about an increase in the number of trained practitioners; otherwise it left matters much as before. Tomes and his associates came to the conclusion that two things were required; there must be a separate organization empowered to register qualified men who alone could practise, and these registered men must be united in a voluntary association. Under their guidance the Odontological Society and the Dental Reform Committee, the latter set up in 1875, worked for these ends. They were successful in that the Dentists Act, introduced as a private measure, was passed in 1878, and the British Dental Association, entrance to which was confined to registered practitioners, was founded in 1880.² Thus after a century and a half, a delay unparalleled in the history of the professions, the dentists overcame the difficulties, inherent in the close

¹ For the period 1841 to 1877 see Alfred Hill, *History of the Reform Movement in the Dental Profession in Great Britain*, 1877.

² The Odontological Society later became a study association and was merged with the Royal Society of Medicine in 1907.

connexion with medicine on the one hand and commercialism on the other, and become recognized as a profession.

Nevertheless misfortunes continued to trouble the profession. Tomes and his associates asked for certain statutory privileges, and Parliament forged an instrument intended to provide them. But the instrument proved to be defective. It is a curious story. The Dentists Act of 1878 was modelled upon the Medical Act of 1858; the administration of the Act was placed in the hands of the General Medical Council, a relic of the subjection of the dental profession to the medical profession. Provision was made for the holding of examinations in dentistry by competent authorities to which power was given to confer diplomas upon successful candidates carrying the right to be registered. A dental register was set up to be kept by the General Medical Council, upon which were laid the duties of supervising the examinations and of erasing names from the register, similar to those already performed in respect of medical education and of the medical register. The Act gave certain privileges to the registered and placed the unregistered under certain disabilities. 'A person shall not be entitled to take or use the name or title of "dentist" (either alone or in combination with any other word or words) or of "a dental practitioner" or any name, title, addition or description implying that he is registered under this Act or that he is a person specially qualified to practise dentistry unless he is registered under this Act.'¹ An unregistered person was not to be entitled to recover any fee or charge 'for the performance of any dental operation or for any dental attendance or advice'.²

The Act did not prohibit practice by the unregistered and therefore by the unqualified. It was intended, as in the case of the medical profession, to make practice by the unqualified difficult. Since the Act confined certain designations to registered dentists, it appeared to give greater privileges to dentists than the Medical Act gave to doctors to whom no designations were reserved. But these privileges turned out to be useless. A decision of the House of Lords in 1910 in the case of *Bellerby v. Heyworth*³ ruled that the words 'specially qualified to practise dentistry' imported a professional qualification entitling the holder to registration and not merely professional skill and competence. This decision was described as 'the charter of the unregistered dental practitioner', since it made it lawful for an unqualified man to represent himself as competent so long as he did not use the forbidden designations.⁴

¹ 41 & 42 Vic., c. 33, s. 3.

² *Ibid.*, s. 5.

³ [1909] 2 Ch. 23 and [1910] A.C. 377.

⁴ *Report of the Departmental Committee on the Dentists Act, 1878* (1919), Cmd. 33, p. 6.

Thereafter the unqualified could and did use such titles as 'dental expert', 'dental consultant', and 'dental operator'. Further, it was ruled in another case that the prohibition upon the recovery of fees by the unregistered did not extend to the recovery of charges for supplying artificial teeth. Also the Act did not grant to registered dentists, as the Medical Act did to registered doctors, the exclusive right to hold certain appointments and to grant valid certificates required by statute.

The Act of 1878 thus failed of its purpose. It did indeed create a profession, but when the statutory defences proved to be shams, matters returned more or less to their former condition. Let us trace the outline of the events which led to the amendment of the Act, leaving aside for the moment the history of the voluntary organization of the practitioners. The Act of 1878 admitted to the register the names of those who were in bona fide practice at that date, as well as those who held an academic qualification. Subsequently admission was limited to those with recognized qualifications. The first edition of the register in 1879 contained the names of 5,289 persons, of whom 4,006 were admitted in virtue of having been in practice before 1878. In 1918 the register contained 5,524 names, of which 4,214 represented qualified persons and 1,281 persons in practice before 1878. The number of registered dentists had thus remained stationary for forty years, though during this period the population of the United Kingdom had increased by 37 per cent. Two things must be remembered. First, the register of 1879 contained the names of all practising dentists, most of whom were not qualified, whereas in the register of 1918 four-fifths of the names were those of qualified persons. Secondly, in addition to the registered dentists in 1918 there was a host of unqualified and unregistered dentists, some whole-time and some part-time or occasional practitioners. As subsequent events showed, there were at least 8,000, mainly whole-time persons of this latter class, and in one sense the true comparison between 1879 and 1918 would set the 1,283 qualified and the 4,000 unqualified in the former year against the 4,214 qualified and 9,000 unqualified in the latter year.

The Act of 1878, as subsequently interpreted, gave so few privileges to the registered and imposed such trivial disabilities on the unregistered that the growth of a large class of unregistered and unqualified practitioners needs no further explanation. What manner of persons composed this class? They included every grade, from the fairly well instructed and honourable practitioner to the wholly ignorant and unscrupulous tout. The better kind of

unregistered men had formed an organization in 1893 known by the formidable though expressive title of The Society of Extractors and Adaptors of Teeth; in 1911 the title was changed to The Incorporated Dental Society. This Society only admitted to membership persons who had passed the examinations of the Society, and imposed rules of professional conduct upon its members in respect of advertising and other matters. The membership in 1918 was about 1,600. Outside the ranks of the registered and of this society, there were to be found practitioners of every social class and every degree of experience, from the few qualified men who had omitted to register to the insurance agent, the sewing-machine canvasser, the butcher, and the blacksmith. Moreover, from about 1900 unregistered practitioners were on the increase, and the increase was mainly in the less skilled and less desirable types of practitioner. Cases were quoted to the Dentists Act Committee of men who were 'drillers and turners and butchers at the outbreak of war' and who in 1918 were 'doing what are tantamount to major dental operations'.¹ Such men employed every art of touting and canvassing known to them. In this, however, they were overshadowed by the dental companies. The latter began to flourish about 1906. Skilled in touting, advertising, and canvassing, they employed men lacking any training and were able in most cases to avoid financial liability for injury. The Dentists Act Committee came to the conclusion that 'gross abuses have been associated with the practice of dentistry by Incorporated Companies; that these abuses are both of the nature of malpraxis and of fraud'.² 'Under the existing law', said the Committee in the following passages which may be held to sum up their view of the situation in 1918, 'any person, however ignorant, unskilled, untrained, can practise dentistry and inform the public by advertisement and otherwise that he practises dentistry.'³ 'It is further represented that the unregistered practitioner is frequently a charlatan attracting business with blatant advertising or unscrupulous touting, who being subject to no control or professional code of ethics, brings discredit on the dental profession. As the public is unable to distinguish the professional dentist from the unregistered practitioner the whole status of the dental profession and its individual members is lowered and debased. We think that the representations that have been made to us are not one whit too strong.'⁴ 'The evidence before the Committee as to the condition

¹ *Report of the Departmental Committee on the Dentists Act, 1878 (1919)*, Cmd. 33, p. 14.

³ *Ibid.*, p. 11.

⁴ *Ibid.*, p. 26.

² *Ibid.*, p. 9.

of the teeth of the masses of the people presents a picture of almost hopeless neglect.¹

In face of this state of affairs a movement towards reform took shape some time before the War. The registered and qualified dentists were in an unfortunate position; they claimed that their privileges should be extended even up to the prohibition of practice by the unregistered. But this was politically impossible because of the vested interests of the existing unregistered men, whose source of livelihood would have been removed, and because some at least of the unregistered were by no means unworthy to practise. Further, the number of men on the register, making allowances for likely additions during the succeeding years, was wholly inadequate for the dental needs of the population. Therefore an extension of the privileges of the registered had to be accompanied by the admission to the register of many, at least, of the unqualified. Reform implied going back to 1878 and beginning again. The registered could hardly be anything but lukewarm over such a proposal, and in the absence of any strong move by them, reform was delayed. Finally in 1918 a departmental committee was set up to inquire into 'the extent and gravity of the evils of dental practice by persons not qualified under the Dentists Act'. Its report, from which quotations have been given, revealed a state of things so scandalous that something had to be done, and in 1921 an amending Act was passed.

The Dentists Act 1921 lays it down that 'no person shall, unless he is registered in the dentists register . . . practise or hold himself out, whether directly or by implication, as practising or as being prepared to practise dentistry'. The only exceptions are in the cases (1) of registered medical practitioners, (2) of the extraction of a tooth by registered chemists when the matter is urgent and no registered practitioner available, and (3) of minor dental work performed under the direction of a registered dentist in the public dental service. No breach has been found or is likely to be found in the defences now surrounding the practice of dentistry. It has been held in the courts that an ingenious person, who got clients to 'take their own bites' and who subsequently constructed the dentures, was contravening the Act. Normally admission to the register is to be only by virtue of the possession of a diploma granted by one of the recognized licensing bodies. But within a certain period of the passing of the Act a right to be registered was given to certain classes of person. They were (a) all members of the Incorporated Dental Society, (b) those who for five of the seven years preceding

¹ Ibid., p. 20.

the coming of the Act into force had been engaged in the practice of dentistry or in the occupation of a dental mechanic, with the additional requirement that in the case of the latter they should within ten years of the commencement of the Act pass a prescribed examination, (c) persons who were practising dentistry 'as their principal means of livelihood' at the date of the Act and who succeeded in passing an examination within two years, and (d) registered chemists and druggists who had a 'substantial practice as a dentist'. An important clause permits a company to carry on 'the business of dentistry', provided that it engages in no other 'business' than that of dentistry, and that a majority of the directors and all the operating staff are registered dentists.

The Act thus completely and effectively closed the profession. It also made changes in administration in the direction of freeing the dentists from the control of the doctors. The Act of 1878 was administered by the G.M.C., whereas under the Act of 1921 a Dental Board, subservient to the G.M.C., has been set up and to it are committed certain duties. The Dental Board consists of 13 members, 7 appointed and 6 elected by registered practitioners. Of the former 4 are appointed by government departments and 3 by the G.M.C. The Board keeps the register and investigates charges in respect of unprofessional conduct. The Board, however, is not master in its own house, as may be seen from the facts that it cannot itself suspend or erase but can only recommend cases for disciplinary action by the G.M.C.; that any regulations which it makes under the Act require the approval of the G.M.C.; and that it has no control over the licensing bodies, which remain under the G.M.C.¹ It has, however, some concern with education, because it has power to charge an annual fee, not exceeding £5, to those whose names appear upon the register. Hence it derives a large income. It is empowered to employ such of this money as is not required for administrative purposes for 'dental education and research or any other public purposes connected with the profession of dentistry'.² The educational and propaganda activities of the Board, financed by what is virtually a tax upon those receiving special privileges, which are not open to the G.M.C. by reason of lack of any income over and above that required for establishment charges, form an interesting experiment designed to secure among other things that there will be a sufficient supply of practitioners

¹ As in the case of the General Medical Council, the Dental Board must admit to the register the name of any person who has obtained a licence in dental surgery from an authorized licensing body and has paid the registration fee. Three medical corporations and eight universities have licensing powers.

² 11 & 12 Geo. V, c. 21, s. 10.

to provide an essential service. The propaganda activities of the Board are well known to those who study advertisements in the underground railways and similar places. The public is now urged not only to drink more milk but also to clean more teeth. The educational activities are less familiar; they take the form of bursaries to dental students and of grants to dental schools.

How do matters stand under the new régime in respect of membership of and recruitment to the profession? Before the Act of 1921 the register contained some 5,500 names, of which about 1,300 were admitted as having been in practice in 1878, though without academic qualifications. Under the Act of 1921 about 8,000 persons without academic qualifications were admitted. Since qualified men alone are now admitted, the proportion of qualified to unqualified rises year by year, and of the 14,000 on the register about half are now qualified. A register of this size gives about the same proportion of dentists in the population as is found in America. It may therefore be taken to be sufficient, but in order that it may be maintained, an annual entry of about 700 into the dental schools is necessary. The number of entrants has in some years fallen below 350, and 1929 was 450. The small number of entrants has caused some concern; it has been said that closure can only be justified if the dental needs of the community are fully met.

Some explanation of this state of affairs may be found in the flooding of the register by the unqualified. About half the registered dentists are still unqualified—'dentists 1921' as they are called. Many of these men before admission to the register had lived in an atmosphere to which ideals of professional conduct were alien. They plied a poorly paid trade; they advertised and they touted. The Dental Board has been engaged, and is still engaged, in attempting to impose upon them the ordinary rules of professional ethics. When summoned before the Board to answer carefully framed charges of poaching for clients, of advertising, of using spot lights and illuminated signs, they exhibit no little bewilderment and indignation. But by slow degrees they are learning their lesson. Meanwhile entrance to a profession is not attractive when many of the competitors are not qualified and do not understand professional standards. But time will effect a remedy; already the number of entrants is rising, and at present there is an ample supply of dentists in number if not in quality.

These events have exercised a profound influence upon the voluntary organization of dentists. The British Dental Association,

founded in 1880, began its career under favourable auspices.¹ It admitted all registered men, including the unqualified who were put on the register under the Act of 1878. Up to 1921 it included in its ranks between three-fifths and two-thirds of those on the register. But as time went on the registered dentists came to form an increasingly smaller proportion of practising dentists. Not only were there hosts of unqualified and unorganized practitioners, but there grew up the Incorporated Dental Society with its examinations and its code—in effect a rival society. The position of the Association was inevitably made difficult, and after the passage of the Act of 1921 it was faced by an issue of great importance. Should it admit to membership the registered but unqualified, the ‘dentists 1921’? It was empowered to do so under its constitution, which was framed to permit the admission of the older group of registered but unqualified who were admitted in 1878. After prolonged and bitter discussion, which nearly disrupted the Association, it has been decided to exclude them. Thus for many years the Association can represent no more than a section of the registered, and there cannot be a single association representative of the profession. The Incorporated Dental Society with some 2,300 members divides the field with the Association with some 4,000 members. It has been said that the relations between these societies are ‘quite amicable’, but ‘cannot be called exactly intimate’.² Voluntary association is thus weak. The largest voluntary society is the Public Dental Service Association, which consists of panel dentists and has some 7,000 members. Its work is confined to matters relating to practice under the Health Insurance scheme. It is a proof of the weakness of the older voluntary associations that they could not undertake to represent the whole profession in the necessary negotiations between the panel dentists and the Ministry of Health. But the future seems to lie with the British Dental Association inasmuch as in time to come all practitioners will be both qualified and registered.

In spite of these difficulties the British Dental Association has exhibited considerable activity and has an honourable record, as is shown by its attempts to improve and extend dental services. It has interested itself in school dental services. In various parts of the country, as for instance at Brighton in 1907, it successfully encouraged the institution of dental dispensaries for the poor.³ Before

¹ See an article by N. G. Bennett, ‘The B.D.A.: Its Origin, Progress, and Advance’, *British Dental Journal*, vol. li (1930), p. 565.

² *Report of the Royal Commission on National Health Insurance*, Minutes of Evidence, vol. i (1925), p. 433.

³ A description of these clinics can be found in the *British Dental Journal*, vol. xxxix (1918), p. 531.

the War a scheme for a voluntary public dental service was drawn up. Owing to the War the coming of the scheme into operation was delayed, but after the first valuation under the National Health Insurance organization panels were set up. The Association claimed in evidence before the Royal Commission on National Health Insurance that it had voluntarily undertaken 'in the public interest the trouble and expense of inaugurating the formation of these dental panels'.¹

The Association has drawn up scales of fees for public appointments and employs the method of the black list. An editorial comment in the *British Dental Journal* says that the 'British Dental Association has learned much from the older body [i.e. the British Medical Association]; it has found valuable precedents in its methods and its administration.'² It had by 1921 attained a position of very considerable prestige, and a leading article in the *British Dental Journal* for 1st January, 1929, contained the following passage: 'the Association occupies to-day in the eyes of government departments and officials a position as the body representing professional interests and as the body to appeal to for assistance or advice on dental matters in the interests of the public that it did not approach ten years ago'.

NURSES

THE ancient vocation of nursing has passed through vicissitudes without parallel in any other vocation which comes under review here. This may be traced to the fact that until recently the only nursing worthy of the name was inspired by religious or at least philanthropic motives. Nurses were 'called' to a life devoted to the alleviation of suffering, and when the 'call' was not given or not heard, the task was left undone or was abandoned to persons to whom the honourable title of nurse was not appropriate.

The monastic orders took upon themselves the care of the sick, monks attending to the male and nuns to the female patients. St. Bartholomew's Hospital dates from 1123, the Holy Cross Hospital, Winchester, from 1132, and St. Thomas's Hospital from 1215. Though from the nature of the case the services rendered were little skilled, they were given by persons, often of good birth, who participated in the best culture of the time. Great ladies

¹ *Report of the Royal Commission on National Health Insurance*, Minutes of Evidence (1925), part ii, p. 259.

² *British Dental Journal*, vol. xlv (1925), p. 929.

sometimes devoted themselves to this calling. After the Reformation, however, three centuries elapsed during which such attention as the sick received was provided by women to whom not only good birth but also any tradition of devoted service was denied. No lay organizations arose to take the place of the suppressed orders. When St. Bartholomew's Hospital was re-established in 1544, provision was made for a matron and twelve women whose status was evidently of the lowest.¹ The same is true of the women found in St. Thomas's Hospital as reconstituted by Edward VI. 'The opportunity which the hospitals afforded for training in the art of nursing was entirely wasted. The idea that the personal tending of the sick and forlorn poor would be a religious service of special value in the sight of God had vanished, and their case, no longer transformed by the devotion of religious enthusiasm, appeared a sordid duty, only fit for the lowest class in the community.'² It might seem from the fact that Guy made careful provision for nurses in his hospital, founded in 1724, that the value of their work had by then come to be better understood. But this does not seem to be the case since, when the London Hospital was founded in 1740, no provision whatever was made for nurses. When a little later the governors did appoint some nurses, they were 'invariably broken-down and drunken old widows'.³ This noble vocation never sank to this low level in Catholic countries where, since the seventeenth century, the sisters of the order of St. Vincent de Paul have been doing the work for which they are famous.

When the nineteenth century dawned there was still no improvement. Mrs. Gamp and Betsy Prig are familiar to all. 'The hospitals of London', wrote Charles Dickens, 'were, in many aspects, noble institutions, in others very defective; I think it not the least among the instances of their mismanagement, that Mrs. Betsy Prig was a fair specimen of a hospital nurse, and that the hospitals, with their means and funds, should have left it to private humanity and enterprise to enter upon an attempt to improve that class of person.'⁴ Towards the end of her life, Mrs. Elizabeth Fry became interested in nursing, and largely by her influence an Institute of Nursing was established in 1840 in connexion with Guy's Hospital. The nurses trained there were under

¹ See Sir Norman Moore's *History of St. Bartholomew's Hospital* (1886). A useful summary of the history of nursing in this country is contained in Miss Elizabeth Haldane's *The British Nurse in Peace and War* (1923).

² A. Clark, *Working Life of Women in the Seventeenth Century* (1919), p. 249.

³ Quoted by Haldane, *op. cit.*, p. 45, from Morris, *The History of the London Hospital*.

⁴ Quoted by S. A. Tooley, *The History of Nursing in the British Empire* (1906), p. 46.

Quaker influence. About the same time the call to a life of devotion to the sick was being sounded in other circles. Pusey was interested in one scheme; another scheme, set on foot in 1848, led to the formation of St. John's House where nurses were trained for King's College Hospital. Miss Florence Nightingale was contemplating work in connexion with this latter organization when the Crimean War broke out.

It is unnecessary to say anything of the well-known story of her labours in the war; they were followed by her work for nurses in time of peace. She bent all her efforts to train nurses efficiently in modern methods and at the same time to reincarnate and preserve the tradition of tending the sick as a calling. From the proceeds of a fund raised in her honour there was founded in 1860 the Nightingale Training School at St. Thomas's Hospital. A year or so later a school was opened in Liverpool under the inspiration of Mr. William Rathbone. In 1866 the London Hospital resolved to initiate a training scheme, and in 1877 the systematic instruction of the whole nursing staff began at St. Bartholomew's. Before the end of the century numerous training schemes were in existence, and nurses who qualified were given certificates. As training spread, the proposal was put forward that qualified nurses should be state registered. To this Miss Nightingale was irrevocably opposed; she regarded it as incompatible with her ideals of nursing.

The British Nurses Association, founded in 1887 and chartered in 1893, had both professional and benevolent objects. Among the former was a registration scheme, and it initiated a voluntary register. But the Association was unpopular with most hospitals; it never had more than 3,000 nurses on its registers; and it was rent by controversies. It was finally captured by the enemies of registration, and after conducting a campaign against later proposals for state registration, reduced its activities to benevolent objects, which it still continues to further. The General Medical Council passed a resolution in 1889 in favour of the uniform certification of nurses, and in 1895 the British Medical Association resolved to press for state registration. The movement for registration was crystallized in 1902 by the formation of the Society for the State Registration of Trained Nurses, in which Mrs. Bedford Fenwick, herself a trained nurse and former matron of St. Bartholomew's Hospital, took a leading part. With her were associated others who were not trained nurses, as well as medical men. Owing to the fact that nursing was a poorly paid vocation ancillary to medicine, it is not surprising that movements in the nursing world have largely been inspired from outside.

Between 1902 and 1919 a long-drawn and often bitter controversy was waged over the registration question. But it was the outsiders rather than the nurses who were storm-tossed. The advocates were divided among themselves and produced rival schemes; bills were introduced in several sessions, and finally a bill, brought in as a government measure, was passed in 1919. The General Nursing Council then set up consists of twenty-five members, of whom sixteen are elected by the registered members of the profession. Provision is made for lay membership on the Council since the two members appointed by the Privy Council may not be either doctors or nurses. The Council keeps a register to which are admitted all those who have attended prescribed courses of training and have passed the prescribed examination. It controls the training schools in the sense that, unless the schools conform to the requirements of the Council, their trainees are not eligible for the registration examination. Using this lever the Council has done much to systematize and improve the courses given at these schools.¹ Any regulations which the Council may make in respect of training must receive the approval of the Minister of Health and be laid before Parliament for twenty-one days. This provision is not inoperative. In 1923 as the result of an address a regulation was amended, while in 1925 a select committee was set up to consider certain proposed regulations which on that occasion were in general approved. The Council has power to erase names from the register, subject to an appeal to the High Court, and it is now in process of defining the occasions upon which these powers shall be used. The Act reserves no function to the registered, who have only the exclusive right to call themselves registered nurses and to wear the uniform or badge implying registration. It is therefore somewhat surprising, at first sight, that nearly 60,000 nurses should have registered. The explanation is that registration has been strongly recommended by the leaders of the profession and that it has become a universally recognized qualification in the nursing world.

There are a number of professional associations, two of which, the College of Nursing and the British College of Nurses, have received munificent endowments. The former is much the larger body and has over 27,000 members. In its early days the College pressed for registration and now limits membership to registered

¹ 'In England and Wales there are 304 hospitals approved by the General Nursing Council for complete training; 127 for partial training; 22 children's hospitals, 72 fever hospitals, and 119 mental hospitals are approved training schools for supplementary parts of the register.' *Lancet Commission on Nursing*, second interim report (1931), p. 111. This report contains a large amount of most useful material relating to the conditions under which nurses work.

nurses. The constitution is democratic. A number of doctors and lay persons, however, have been elected to the council to facilitate co-operation with the medical profession and the public. A brochure issued by the council states that 'the two great drawbacks to the Nursing Profession as a career for educated girls are the low salaries offered and the lack of any pensions scheme; to overcome these the Council of the College has drawn up a Scale of Salaries which is being increasingly adopted by Hospitals and Employing Authorities and also a Superannuation Scheme'. The College pursues an active policy regarding the whole range of professional problems and publishes the *Nursing Times* in which these matters are discussed.

Nursing has thus undergone a profound transformation. Whereas at the beginning of the century nursing was one of the few 'lady-like' vocations, there are now many such vocations some of which offer greater attractions. In consequence recruitment has come to be from a rather different stratum of society, and entrance is less often than formerly the result of a 'call' inspired by religious motives. At the same time the dignity of the vocation has been enhanced. The training schools, the General Nursing Council, and the professional associations are all working towards the conception of the building-up of a skilled and responsible vocation. The progress which has been made would have been impossible, had it not been for a change in the functions of the nurse. At all times the direct personal relation of nurse to patient is a foundation upon which a sense of responsibility can be built. Until lately, however, the nurse worked under the direction of the doctor, and there was little element of co-operation. While the nurse must continue to work under direction, the tendency is towards co-operation which is made possible by the higher training. The vocation of nursing is becoming professionalized. Would Miss Nightingale, if she revisited the scene, find her fears realized? We think not, and to the extent that this is so, we must look for the explanation, not in the fact that all for which she contended is unnecessary, but in the fact that a skilled and dignified profession may also be in her sense a 'calling'.

MIDWIVES

MIDWIFERY has existed as a vocation from immemorial days, and, moreover, as the one vocation almost exclusively practised by women. In the seventeenth century 'the midwife held a recognized

position in society and was sometimes well-educated and well paid'.¹ The midwife acquired her knowledge by informal apprenticeship, and successful midwives were considered little, if at all, inferior to doctors. A midwife was licensed by the bishop, and had to be recommended by matrons who knew of her skill, and by the parish priest who could speak of her life and conversation. The bishops were supposed to inquire into the professional efficiency of the candidates, but were more interested in their orthodoxy. Orthodoxy was important because the midwives were particularly enjoined to baptize if there was any risk of the infant dying before a priest could arrive. 'In hard labours the head of the infant was sometimes baptized before delivery.'²

The publication of a number of books testifies to the interest taken in midwifery in the seventeenth century. About that time the practice grew up of licensing midwives by the Barber-Surgeons. Candidates were examined by 'six skilful midwives and as many chirurgeons expert in the art of midwifery'.³ But towards the end of the century the richer classes began to employ doctors in place of midwives; queens, for instance, were no longer delivered by skilled women as of old. The vocation, bereft of its well-paid and well-placed members, sank in prestige, and unless performed by doctors, the work was left to poorly educated women of little or no training and skill. This situation endured until well on into the last century. When Mrs. Hubbard became interested in the matter, 'she found that the majority of women calling themselves midwives then actually at work in Great Britain were not only untrained and inexperienced, but ignorant, superstitious, and often of a very low character'.⁴

Owing to the efforts of Mrs. Hubbard, Mrs. Henry Smith, and Miss Emma Brierly, the Midwives Institute was founded in 1881. Its first object was 'to raise the status and improve the efficiency of midwives'. The means by which it was hoped to achieve these ends was the legal regulation of the vocation, and a bill was promoted in Parliament in 1890 which reached its second reading.⁵ The Institute, through its friends in Parliament, continued to promote bills until in 1902 the Midwives Act was passed. This Act

¹ A. Clark, *op. cit.*, p. 265.

² *Ibid.*, p. 277, quoting Watson, *Clergyman's Law*, p. 318; see also J. C. Cox *The Parish Registers of England* (1910), p. 56.

³ A. Clark, *op. cit.*, p. 276.

⁴ Quoted, from a life of Mrs. Hubbard, by Emma Brierly, *In the Beginning* (1924), p. 7.

⁵ In 1872 the Obstetrical Society of London instituted a diploma for midwives. Bills to regulate midwifery were drafted by the B.M.A. in 1879 and in 1884 but were not introduced.

protected the title of midwife, set up a roll of midwives, and subjected to a penalty those women not on the roll who 'habitually and for gain attend women in childbirth otherwise than under the direction of a qualified medical practitioner'.¹ An amending Act of 1926 strengthened this provision by omitting the words 'habitually and for gain'. Since a woman not on the roll can neither call herself a midwife nor take a case except under a doctor, the vocation is effectively 'closed'.

This roll is kept by the Central Midwives Board. The constitution of the Board was slightly amended by the Midwives Act of 1918. It consists of fourteen members, of whom three (before 1918 one only) are appointed by the Midwives Institute. With the exception of a few persons specially interested in midwifery, membership of the Institute is confined to midwives, and therefore the practitioners are directly represented on the Board through their professional organization. Two of the three representatives of the Institute are now in fact midwives. Of the remaining eleven members of the Board, four are appointed by the Minister of Health and the rest by various organizations, such as the Royal College of Physicians. Upon the Board is placed the duty of drawing up rules for the admission of persons to the register, for the 'regulating, supervising and restricting within due limits the practice of midwives', and for 'deciding the conditions under which midwives may be suspended from practice'.² The Board can also erase the name of a midwife from the roll who disobeys the regulations of the Board or is found guilty of 'other misconduct'.³ The Board was originally placed under the general supervision of the Privy Council. The rules made by the Board required the approval of the Council, and the Council had to take into consideration any representations made by the G.M.C. In 1919 all powers and duties of the Council under the Act were transferred to the Ministry of Health.

In the exercise of its powers as to admission to the roll the Board has approved some 200 institutions as training centres. Candidates who have attended these centres sit for the qualifying examination held by the Board. As in the case of nurses the examination is uniform and is held at various local centres. There are nearly 60,000 names on the roll, of whom only about 14,000 are returned as practising midwives by the local authorities who have certain supervisory duties under the Act. Though those eligible for membership of the Midwives Institute are numerous, there are under 2,000 full members. If the members of affiliated institutions are added, the total rises to about 4,000. The small proportion of

¹ 2 Edw. VII, c. 17, s. 1 (2).

² Ibid., s. 3 (3).

³ Ibid.

practitioners who are organized is noteworthy, because professional representation on the statutory regulating body is given to the professional association and not to the practitioners as a whole.

The regulations governing the practice of midwifery made by the Board are very numerous and detailed. Cases of disobedience are reported to the Board by the local supervising authorities. The Board has also power to deal with cases of 'other misconduct', and is in process of interpreting the implications of 'other misconduct'. It has ruled that the professional association of a midwife with an unregistered medical practitioner, and advertising, might come under this head.¹ But the charges with which it deals mostly relate to the breaking of rules designed to secure efficiency among the practitioners. In the year 1928-9, 34 cases were dealt with and 10 names erased; in 1929-30, 37 cases were dealt with and 13 names erased.²

The legal regulation of midwives has worked a revolution in a quarter of a century. The state of affairs found by Mrs. Hubbard has long passed away. The status of the practitioners has risen so markedly that many witnesses before the Departmental Committee on the Training and Employment of Midwives, which reported in 1929, urged that all midwives should be required to possess the general nursing qualification. The Committee, while sympathetic to this development, did not see its way to endorse the proposal, but recommended that candidates should have to pass a preliminary examination as a test of general education. The Committee also made other recommendations of considerable importance. The chief of these were that the membership of the Board should be reduced to nine, of whom the practitioners should elect three, that the Board should have disciplinary powers not unlike those of the G.M.C., and that the duty of approving training-centres should be placed in the hands of the Ministry of Health. The last recommendation would mean that the control of teaching and examining would be under different authorities. This is an unusual arrangement and is objectionable in principle. There seem to be no special circumstances making it desirable in the case of this profession. The Committee was anxious that 'the midwifery profession' should be placed 'in a position to enjoy privileges and advantages similar to those held by other professions in this country'. With this aim in view it proposed to give power to the Board to 'caution, suspend, or remove from the Roll a midwife, who, after due inquiry, is

¹ *Reports of the Central Midwives Board*, 1926, p. 8, and 1927, p. 10.

² *Ibid.*, 1929, p. 6, and 1930, p. 7. In neither year was advantage taken of the provision which permits any one, whose name has been erased, to appeal to the High Court.

judged by the Board to have been guilty of conduct in any professional respect . . . which makes her unfit to pursue her calling'.¹ This means that in future the conduct of midwives would not be regulated by detailed orders but by general principles such as govern the medical profession. But while the Committee gave with one hand, it took away with the other, since it proposed to remove from professional control the supervision of professional education. It may be doubted whether any good purpose was served by the replacement in 1919 of the Privy Council by the Ministry of Health as the final controlling authority. The Privy Council holds that position in all the other professions belonging to the medical group, and if it is desired to assimilate the position of midwifery to that of these other professions, there is much to be said for putting it under the same authority.

VETERINARY SURGEONS

THAT veterinary science was recognized as a separate study in the ancient world is evident from the fact that Vegetius wrote a treatise on the subject in the fourth century A.D. It came into its own once more on the Continent in the late seventeenth century at about the time that dentistry began to receive separate attention. But the serious study and application of veterinary science in this country was delayed even longer than was that of dentistry.² In the fourteenth century the term *marshall* had come to be used for a doctor to horses and the term *marchalcy* for his profession.³ The marshalls were organized as a gild from 1356. Somewhat later we hear of farriers whose company received a charter in the seventeenth century. After 1700 we hear no more of marshalls; and the only organized body of persons whose duty it was to care for animals were the farriers. Their company did nothing for education or science; the members were ignorant and illiterate. Had it been otherwise, events might have followed the more usual course and the farriers might have absorbed the new knowledge from the Continent, built up standards of training, and so founded a profession. As it happened, things fell out differently and the stimulus came from above.

¹ *Report of the Departmental Committee on the Training and Employment of Midwives* (1929), p. 55.

² Arthur Young (*Travels in France*, 19 Oct. 1787) notes that at the government veterinary station there were students 'from every country in Europe except England'.

³ See F. Bullock, 'Notes on the Early History of the Veterinary Surgeon in England', *Proc. Royal Soc. Medicine*, vol. xxix, 1929.

'Prior to the establishment of the Veterinary College there were many persons in London, who, although they were not styled veterinary surgeons, yet practised the art with advantage to their employers and credit to themselves.'¹ These persons were mostly surgeons, and 'it is principally to the professors and practitioners of our elder sister, Human Medicine, that we are indebted for reclaiming our art from the depths of degradation into which for centuries it had been plunged'.² In 1788 Vial de Sainbel, a French teacher of veterinary science, arrived in London with introductions to Sir Joseph Banks and others, together with a proposal to set up a veterinary college in London. As a result a college, to which permission to use the title Royal Veterinary College was afterwards granted, was founded in 1791, and the great John Hunter was one of the first vice-presidents. A course of instruction was organized; diplomas were granted by the College; and in this manner it was hoped that a new class of educated veterinary practitioners would be created.³

Sainbel died shortly after his appointment as the first head of the College and was succeeded by Coleman. The latter was a man of great energy, forceful and tyrannical, who, until his death in 1839, ruled the profession. While he did much to advance the training and status of the practitioners, his overbearing attitude, his methods which were sometimes unscrupulous, and his outlook, which was often obscurantist, did not a little to hinder progress. He was violently attacked, and the veterinary world was rocked with controversies; the foundation of a college in Edinburgh in 1823 by Dick, now the Royal (Dick) Veterinary College, widened the breach.⁴ In 1827 two monthly periodicals were started which were largely devoted to abuse of the Royal Veterinary College; the Veterinary Medical Association, founded in 1836, 'had its origin in a series of events . . . which charity could wish were blotted out for ever. They constitute a dark era in our history, and one in which malignant feelings were allowed to obtain the mastery'.⁵

Nothing could be done until after Coleman's death. Then certain practitioners, trained either in London or in Edinburgh, petitioned for a charter.⁶ They represented, among other things,

¹ *Veterinary Record*, vol. ii (1846), p. 20.

² *Ibid.*

³ The *O.E.D.* quotes the following from the *European Magazine* in 1809: 'the ancient farriers of our metropolis have conferred on themselves a title highly pre-eminent, that of veterinary surgeons'.

⁴ As an example of the controversies of that time see an anonymous pamphlet, *Veterinary Surgery*, published in 1834.

⁵ *Veterinary Record*, vol. i (1845), p. 39.

⁶ At that time it was said that 'the majority of the descendants of the more

that nearly a thousand persons 'who had been graduated at the Veterinary Colleges of London and Edinburgh' were then practising as 'veterinary surgeons'; that 'the veterinary art is not recognized by the law as a profession'; that, owing to their 'not participating in the privileges and exemptions which have been granted to the medical and other professions, much injury has arisen to themselves in the course of their practice', and that the grant of a charter would 'materially contribute to the advancement of the veterinary art and the respectability of the veterinary practitioners'. In order 'to encourage a design so laudable' the Royal College of Veterinary Surgeons was created by royal charter in 1844, and membership limited to those who held certificates from the two recognized veterinary colleges and those who should in future pass the examinations which the Royal College was empowered to hold. It was also provided that any school which desired to train candidates for the examinations of the Royal College must be affiliated to it for that purpose by Royal Sign Manual. The privileges attaching to membership are set out in the following clause of the charter. 'We do further declare and grant that the veterinary art as practised by the members of the said body politic and corporate shall be henceforth deemed and taken to be, and recognised as, a profession, and that the members of the said body politic and corporate, solely and exclusively of all other persons whomsoever shall be deemed and taken and recognized to be members of the said profession or professors of the said art, and shall be individually known and distinguished by the name or title of veterinary surgeon'.¹ The sole material benefit attaching to membership was the protection of this one title. The clause is interesting because it embodies an attempt, apparently unique, to raise a vocation to the rank of a profession by royal prerogative.

Unfortunately for the profession this move did not lead to peace. The R.C.V.S. soon came into conflict with the Edinburgh College over the question of examinations. In order to obtain freedom for the Scottish College, Dick induced the Highland and Agricultural Society to offer a diploma. Thus there came to be two rival qualifications, though those holding only the diploma were liable to an injunction prohibiting them from using the title 'veterinary surgeon'. The R.C.V.S. sought for an increase of its powers, but Parliament would not consent until the profession had composed

respectable class of farriers have long since become merged into our body' (ibid., vol. ii (1846), p. 30).

¹ *Charter of the R.C.V.S.*, 1844; for a full description and discussion of the statutes and charters governing the profession see F. Bullock, *The Law relating to Medical, Dental, and Veterinary Practice* (1929).

its differences. Nothing could be done so long as Dick was alive. In 1879 a supplementary charter was obtained which permitted the R.C.V.S. to admit to membership persons with the diploma. It was arranged at the same time that no more diplomas should be granted. This made it possible for the profession to present a united front, and in 1881 the Veterinary Surgeons Act was passed.

The Act confirms the charter with certain modifications. It also lays upon the R.C.V.S. the duty of examining the students of recognized veterinary colleges, that is to say of those colleges which are affiliated to the R.C.V.S. by Royal Sign Manual. Therefore it does not lie with the College to determine which teaching bodies shall have the important privilege of affiliation. It falls to the Home Secretary to make the decision, though no doubt the opinion of the R.C.V.S. would always be asked for whenever any institution applied for affiliation. At the present time there are five affiliated institutions—the colleges at London, Edinburgh, Dublin, and Glasgow, and the veterinary school of the University of Liverpool. The Act requires the R.C.V.S. to keep a register of members and to admit to membership those who pass the examination.¹ The R.C.V.S. thus became, in effect, an organ of the State for the examining and certificating of veterinary surgeons. The registered are in a privileged position; no unregistered person may use any title which would lead the public to suppose that he is registered, and no unregistered person may take or use 'the title of Veterinary Surgeon or Veterinary Practitioner, or any title, addition, or description, stating that he is a Veterinary Surgeon or a Practitioner of Veterinary Surgery or of any branch thereof, or is specially qualified to practise the same'.² Unregistered persons are not entitled to recover fees for veterinary attendance or advice.

At first sight it might seem that the veterinary surgeons had obtained no more protection than that received by the dentists under the Act of 1878. But, as interpreted by the courts, the differences are vital. The only thing forbidden to an unregistered dentist was to represent himself as entitled to be registered. The unregistered veterinary surgeon is not only subject to a similar prohibition, but is also restrained from representing himself as fit to practise as a veterinary surgeon. It has been decided, for instance, that he may not use the term 'canine specialist', though 'canine surgery' and in some circumstances 'veterinary chemist' are permitted. The grounds for permitting the latter terms are that no assumption of personal qualifications is implied. What the Act of

¹ Those practising at the time of the passing of the Act were admitted without examination.

² 44 & 45 Vic., c. 62, s. 17 (1).

1881 strikes at is the representation by the unregistered of personal qualifications to undertake veterinary work, whereas all that the Act of 1878 struck at was the representation of the possession of technical qualifications. It follows that, if in any line of business certain persons alone can make it known that they are fitted to render services, those persons will have a virtual monopoly of business. Additional privileges, similar to those granted to doctors, have also been given to members of the R.C.V.S. under various Acts, such, for instance, as the right to be appointed veterinary inspector and the right to grant valid certificates.¹

The R.C.V.S. possesses disciplinary powers not unlike those of the G.M.C., but any person whose name has been removed from the register can appeal to the Privy Council. Following the precedent of the G.M.C., it examines and makes representations concerning bills which have a bearing upon veterinary matters, and since it was originally a purely voluntary body it has gone somewhat further, and has, for instance, made representations to the War Office that the pay of veterinary officers is unsatisfactory. Owing, however, to the conferment of statutory powers and duties, which have converted a voluntary organization into an organ of the State, the R.C.V.S. has found it advisable to limit those semi-political activities which normally fall to a professional association, and in general it leaves professional politics to the voluntary professional organizations. Local associations of practitioners have long been in existence. Attempts to combine them were unsuccessful until 1881, when the National Veterinary Medical Association was founded. Until after the War this Association did little more than attempt to bring the local associations into touch with one another. It had no periodical publication. In 1919 it was described as 'a mere passive institution; it possesses no drive, and plays a small part in national work. It gives no lead and has no voice.'² It was re-organized in 1930, and took over the *Veterinary Record*, previously a proprietary journal. There has been an attempt to copy the methods of similar associations in the medical and dental worlds, and there has been considerable activity over the matter of fees and salaries; the protests have met with some degree of success, though veterinary remuneration remains markedly lower than medical or dental.³ The Association has also study activities; though

¹ See F. Bullock, *Law Relating to Medical, Dental, and Veterinary Practice* (1929), pp. 164 foll.

² *Veterinary Record*, June 21st, 1919, p. 475.

³ An Army Order of 1926 gave the pay of a colonel in the R.A.M.C., the A.D.C., and the R.A.V.C. as £3 10s., £3 7s., and £2 15s., respectively.

something has been done, much remains to be achieved before it reaches an undisputed position.

For many years dissatisfaction has been expressed in certain quarters with the condition of veterinary science and practice in this country. Criticism grew in volume after the War and became concentrated in an attack upon the council of the R.C.V.S. It was said that the alleged unsatisfactory state of affairs was due to the manner in which the council of the College had carried out its duties. It was made a matter of grievance that the only avenue to the profession was through the examinations of the R.C.V.S. The critics were singularly unfortunate and maladroit in their methods. The Vice-Chancellor of the University of Liverpool opened the attack in the columns of *The Times*. His letter contained several inaccurate statements, and of this fact Sir John McFadyean did not fail to take advantage in reply. Since the Vice-Chancellor had also appeared as the protagonist of the Liverpool veterinary school, his antagonist was able to turn defence into attack and to point to certain curious incidents in the history of that institution and certain apparent defects in its organization. The Vice-Chancellor was led on to make still wilder statements and was finally driven from the field in confusion. It is not so surprising that Dr. Adami should have come to grief as that he and his friends (the course of events makes this inference inevitable) should have induced first *The Times* and secondly the Privy Council to come forward and make exhibitions of themselves. *The Times* advanced majestically to the attack and was made to look ridiculous when it was pointed out that it had committed the elementary mistake of confusing the Royal Veterinary College with the Royal College of Veterinary Surgeons. Finally it was the turn of the Privy Council. It is laid down in the Act of 1881 that 'the Council of the said Royal College shall forthwith obey any order of the Privy Council under this Act'.¹ Taking advantage of this provision, the Privy Council addressed a minatory letter to the council of the R.C.V.S. advising it to pay close attention to the demands of the universities (i.e. of Dr. Adami and his friends) that the avenues of entry into the profession should be widened. 'Otherwise the only alternative may prove to be a searching inquiry into the whole question, which might easily lead to great changes in the powers and privileges of the College.'² The council replied that, according to the advice of eminent counsel, the only step which it could take to satisfy the demands of the Privy Council would be *ultra vires* the Act of 1881. The R.C.V.S.

¹ 44 & 45 Vic., c. 62, s. 18 (3).

² *Veterinary Record* (1922), p. 66.

must therefore bow its head and await its doom. So far as the Privy Council was concerned the rest was silence.

It was a misfortune that the dissatisfaction with the position should have led to these farcical encounters instead of to a careful inquiry into the whole matter. Criticism was directed to several points. Objection was taken to the single uniform examination, and it was desired to substitute a system similar to that prevailing in the medical and dental worlds. The relative merits of the two systems of entry will be discussed later, and though reasons will be found which tell against the uniform system, it cannot be supposed that it is the source of all the alleged defects. It was said that the educational standard was low. For some years, however, about half the candidates have been matriculated. It was said that veterinary surgeons did not keep themselves up to date and that the standards of behaviour were not what they should be. It would not be difficult to amass evidence showing that there is some truth in these criticisms. For evidence on the last point it is not necessary to go outside the pages of the professional journal where the shortcomings of the practitioners have received severe comment. But all these defects are symptoms of something far more important than any inadequacy in the controlling machinery.

There has never been any serious attempt to promote veterinary science in this country. The first chair of veterinary anatomy was not founded until 1919. There is no understanding of the part which veterinary science might play in public health. Very little support from public or private funds has been forthcoming for veterinary research or teaching. The Royal Veterinary College is a private institution. The R.C.V.S. has no responsibility for it and no funds to aid it. A departmental committee recently reported that 'the condition of the Royal Veterinary College is a national disgrace. The building is for the most part in a state of dilapidation, and much of it has been condemned by the local authority as a dangerous structure.'¹ In medicine and dentistry the support for teaching and research institutions comes largely from public funds. That must be so in every profession based upon scientific knowledge, and if the community neglects to provide the necessary fundamental support for such a profession, the practitioners will not be as skilled, educated, and esteemed as they might be. The veterinary profession is poor corporately and individually. Until 1920 almost the only source of income of the R.C.V.S. was the money derived from examination fees. In that year it obtained an Act which

¹ *Report of the Departmental Committee on the Reconstruction of the Royal Veterinary College* (1929), p. 21.

enabled it to levy an annual fee of a guinea upon veterinary surgeons practising in the United Kingdom. The practitioners have few rich clients and their incomes are relatively low.¹ They are few in number; there are about 3,500 names on the register. Moreover, unlike the members of most other professions, they live in rural districts isolated from their fellow practitioners. Therefore veterinary surgeons can do less for themselves than can the members of most of the great professions; but the chief source of difficulty is the neglect by the community of veterinary science, and it is to the amendment of this that the critics of the profession should address their efforts.

PHARMACISTS

MENTION has already been made of the earlier days of the chemists and druggists. We met them in the course of our sketch of the apothecaries, some of whose functions they assumed. We shall meet them again, when we come to describe the chemists, for whose title they compete. The drugs sold in an apothecary's shop were bought from the grossarii, or sellers in gross. When the apothecaries made their successful advance into the field of the physicians, they began to concentrate upon the compounding and prescribing of drugs. Mineral medicines were bought from chemists and galenicals from druggists. Chemists and druggists, whom we may class together as pharmacists, seem to have evolved as specialist shopkeepers out of the grocers when the latter took to retailing. They are frequently mentioned in the eighteenth century. The apothecaries no doubt intended to use the new powers obtained in 1748 to restrain the chemists and druggists from practising pharmacy. The apothecaries could not, however, capture the whole field, and while successful in maintaining their position against the physicians, they gave ground on the other flank to the pharmacists. There is a record of an organization among the latter in 1802, and in 1815 they achieved a great success. The Apothecaries Bill included provisions to prohibit the practice of pharmacy by uneducated persons and to give power to the apothecaries to examine pharmacists. As the result of an agitation, a clause was inserted in the Act which exempted chemists

¹ The clients of the veterinary surgeon, farmers for the most part, together with some sporting people, are less well able to appreciate professional knowledge and standards than are the clients of any other established profession.

and druggists from its provisions. Another similarly unsuccessful movement on the part of the apothecaries in 1841 led to an organization of pharmacists in self-defence.

This organization, which had been preceded by a short-lived General Association of Chemists and Druggists of Great Britain founded in 1829, arose as the result of a meeting called by Jacob Bell. At the meeting a resolution was passed which opened with the following words: 'that for the purpose of protecting the permanent interests and increasing the respectability of chemists and druggists an association be formed'.¹ The Pharmaceutical Society, which thus came into existence, from the outset laid great stress upon education as a means of raising the status of its members. In 1842 it founded a School of Pharmacy and instituted a diploma.

'The Pharmaceutical Society', said the official publication of the Society a few years after its foundation, 'was designed as a means of raising the qualifications of pharmaceutical chemists, and placing between them and unqualified persons a line of demarcation. The diploma was intended as a distinctive mark for the information of the public. It was not, in the first instance, intended as a mark of absolute qualification, and it was stated at the time that it would be some years before it would assume this character. But precautions were taken from the beginning to exclude all persons known to be disreputable or unworthy of being classed with the general body of chemists and druggists and . . . the certificate may be taken generally as a test of respectability. It also denotes that the possessor is one of those who has united with others in the endeavour to raise the qualifications of his class.'²

The Pharmaceutical Society rose to a position of considerable importance within a few years. In 1843 it received the grant of a royal charter through the influence of William Allen, the first president and a well-known philanthropist. Some years later there was a scare caused by arsenical poisoning, and the Arsenic Act was passed in 1851 regulating the sale of that substance. There soon appeared to be need for additional safeguards, and the Government sought by the Pharmacy Act of 1852 publicly to distinguish a class of qualified pharmacists. According to the charter of 1843 all chemists and druggists in business before that date were eligible for membership, but others who wished to join were able to do so only after passing an examination. Upon this foundation the Pharmacy Acts of 1852 and 1868 built a remarkable structure. The first Act confirmed the charter with some modifications, and laid upon the Society the duties of keeping a register and holding examinations.

¹ *Pharmaceutical Journal*, vol. ciii (1919), p. 306.

² *Ibid.*, vol. vii (1848), p. 156.

All existing members of the Society were to be registered, and admittance to the register in future was to be by examination only. Upon the registered were conferred the titles of Pharmaceutical Chemist and Pharmaceutist, but no functions were reserved to them. Thus only eleven years after its foundation the Society became a state registration body. A similar fate, as we have seen, befell the Royal College of Veterinary Surgeons. The latter institution is both a state registration body and an obligatory association of registered persons, since all the registered must be members. The position of the Society was the same from 1852 to 1868, but under an Act of the latter year those whom the Society registers no longer need become members. The Society therefore is now both a state registration body and a voluntary association.

The first Act put no impediments in the way of unqualified persons conducting the business of pharmacy, so long as they did not use the prescribed titles or any title implying that they were registered. They could, for instance, call themselves chemists and druggists. The second Act expanded this mechanism to regulate pharmacy in a far-reaching manner. Under its provisions no person is 'to sell or keep open shop for retailing, dispensing or compounding' certain poisons named in the Act, or 'to assume or use the title "Chemist and Druggist", or Chemist or Druggist, or Pharmacist, or Dispensing Chemist or Druggist', unless such person is a 'Pharmaceutical Chemist or a Chemist and Druggist within the meaning of the Act'.¹ There are, therefore, two privileged classes, the Pharmaceutical Chemists created by the first Act and the Chemists and Druggists created by the second Act. The latter consists of persons in business as chemists and druggists at the passing of the Act and of such persons as have passed the qualifying examination held by the Society and are registered by the Society. But no registered medical practitioner may be registered under the Act of 1852 as a pharmaceutical chemist, and no pharmaceutical chemist, who obtains a medical licence, can continue to be registered. Registered medical men are not registrable under the Act of 1868, which also provides that there shall be no interference with the business of any legally qualified apothecary or of any member of the R.C.V.S., or with the making and dealing in patent medicines or with the business of wholesale dealers in the supplying of poisons. The Act of 1868 therefore 'closed' the

¹ 31 & 32 Vic., c. 121, s. 2. Under Section 16 of the same Act it seems to follow that the title Pharmacist is restricted to pharmaceutical chemists. Section 3 of an Act of 1908 lays down that, notwithstanding anything in the Act of 1868, the title 'pharmacist' may be assumed by chemists and druggists within the meaning of the Act as well as by pharmaceutical chemists.

business of the retail sale of poisons to all persons except those registered by the Pharmaceutical Society, registered medical practitioners, and veterinary surgeons.¹

Under these Acts there is no distinction, otherwise than regarding titles, between pharmaceutical chemists and chemists and druggists.² But the former title is granted only to those who have passed a more difficult examination. Formerly this higher examination was open only to those who had passed the qualifying examination for chemists and druggists. There is now a direct path to this higher examination. The universities of London, Manchester, and Glasgow grant degrees in pharmacy. These degrees confer no right to registration; but the holder of such a degree may be registered as a pharmaceutical chemist after a further examination in forensic pharmacy and the completion of a specified amount of practical training. Pharmaceutical chemists are therefore a more highly qualified class of chemists and druggists. The Society thus keeps two registers which is unique among those professions which have been regulated by statute. The existence of two registers is an accident rather than a matter of policy. Had it been decided in 1868 to admit all practising chemists and druggists to the existing register and to admit thereafter only those who passed a qualifying examination, as was done under analogous circumstances in the case of dentistry, there would have been but a single register to-day.

Unqualified persons are not prohibited from practising pharmacy but only from selling poisons and using certain titles. A further very valuable privilege was given to the registered by the Insurance Act of 1911. With certain exceptions as to doctors in rural districts, only registered pharmacists can dispense medicines prescribed under the National Health Insurance Act—any medicine, that is to say, and not only those containing some trace of a poisonous substance. This privilege is shared by firms and companies, which under the Act of 1908, about to be more fully described, are entitled to carry on the business of chemist and druggist.

In the performance of its duties the Society is subject to the supervision of the Privy Council. Such by-laws as it may frame in order to carry out its duties, and they include regulations concerning

¹ Under the Apothecaries Act of 1815, most of which is still in force, the Society of Apothecaries has the right to conduct an examination and to license persons to act as dispensers, but not to keep open shop for the sale of poisons. Under the Act of 1908 the Pharmaceutical Society can register these certificated persons as chemists and druggists without further examination.

² In 1930 there were 23,256 names on the register, including 1,815 pharmaceutical chemists and 21,441 chemists and druggists.

examination subjects, require the confirmation of the Privy Council. The Privy Council cannot compel the Society to make a by-law, but it can exercise, and has exercised, pressure by refusing assent to a proposed by-law until such changes as the Council desire are put forward.¹ The appointment of examiners is subject to the approval of the Privy Council, and representatives of the Privy Council have the right to be present at examinations. The Society does not possess the power of erasing a name from the register. The Privy Council, however, can order the erasure of the name of any chemist or druggist who is convicted of any offence against the Act of 1868 'which in their opinion renders him unfit to be on the register'.² There is no power, even in the hands of the Privy Council, to erase a name for unprofessional conduct. The Society can expel a member, but 'the cases of annulment of membership are very infrequent',³ and expulsion entails no loss of the legal privilege to keep open shop for the sale of poisons.⁴

The Act of 1868 further lays upon the Pharmaceutical Society certain very important and onerous duties. The Society is responsible for seeing that the provisions of the Act are obeyed. To this end the Society has to initiate prosecutions, not only against those who sell poisons without possessing the required qualifications, but also against those who fail to comply with the regulations contained in the Act concerning the conditions under which poison must be sold. Thus the Society may have to prosecute not only the unqualified but also its own members who offend. A large amount of work is involved, the cost of which is wholly borne by the Society from its own funds. In 1929, for instance, 8,869 shops were visited and in 276 cases proceedings were instituted. In the course of such proceedings legal decisions have been obtained as to the interpretation of the all-important clause in the Act of 1868 which makes it 'unlawful for any person to sell, or keep open shop for retailing', poisons unless qualified. In the first place what constitutes 'sale'? It was held in *The Pharmaceutical Society v. Wheeldon* (1880) that an unqualified assistant, who in the absence of his master sells poison, is liable, though he sells on behalf of his master who is duly qualified.⁵ What, therefore, the Act primarily

¹ For the relations between the Privy Council and the Pharmaceutical Society see *Pharmaceutical Journal*, vol. cii (1919), p. 361.

² 31 & 32 Vic., c. 121, s. 26.

³ *Pharmaceutical Journal*, vol. cxiv (1925), p. 231.

⁴ The Privy Council has no power to restore a name to the register. The penalty of erasure is therefore very drastic and has apparently never been applied.

⁵ See W. Glyn-Jones, *Law of Poisons and Pharmacy* (1909), for an account of all the more important legal decisions.

strikes at is the handing of poisons across the counter by the unqualified. In the second place what is the interpretation of the word 'person'? An attempt was made in *The Pharmaceutical Society v. The London and Provincial Supply Association Ltd.* to construe 'person' as including companies. The defendant Association was a general store where poisons, among other articles, were sold and the sale was conducted by a qualified servant. It was held that 'person' in the Act did not include companies and that the Association was not liable under the Act.

Following upon this latter decision the Pharmaceutical Society proposed an amendment of the law which would have rendered it illegal for companies to keep open shop for the sale of poisons. While the Society was endeavouring to tighten up the law, others were attempting to relax some of its provisions. The use of scheduled poisons in agriculture and horticulture had increased, and it was felt to be a grievance that qualified chemists alone should have the right to sell them. The combined result of these movements was The Poisons and Pharmacy Act of 1908. Under that Act companies are permitted to keep open shop for the sale of poisons, provided that the business of the company, so far as it relates to the sale of poisons, is under the control of a legally qualified superintendent; and that, when the superintendent cannot personally supervise any shop where such business is carried on, there is a qualified manager. The Society failed to gain its main object. Companies remained free to keep open shop, and were merely required to employ qualified superintendents and in some cases also qualified managers.¹ The Society also failed to prevent the extension of the power to sell poisons for agricultural and horticultural purposes. It was made permissible for local authorities to license unqualified persons to keep open shop for the sale of poisons to be used exclusively in this manner.

The pharmacist was originally a small retailer who was called upon to employ his special skill in the performance of all his duties.

'At the time the Charter was granted the occupation of a chemist was a comparatively restricted one, being almost solely confined to dealing in and dispensing drugs and poisons, and might be said to be more of a profession than a trade. The fact that a charter was granted confirms this view. Nowadays practically every chemist's shop is an extensive emporium for the sale not only of drugs, but also of various prepared foods and drinks, toilet articles, &c., and in some cases a much more

¹ Some measure of the extent of trading by companies is afforded by the number of superintendents. In 1924 they were 5.3 per cent. and in 1930 6 per cent. of all those on the register.

extensive range of subjects. In the past seventy years the occupation of a chemist has become much more of a skilled trade or branch of commerce than a profession.¹

The Act of 1908 marks one phase in this process of evolution. The pharmacist now has to compete with the chain store and the general store. These changes have had a profound effect upon the position of the pharmacist and upon the problems with which the Society has to deal. Formerly most pharmacists could hope some day to become the owner of a business. It is not possible to say what proportion of pharmacists now remain employed all their lives, but it must be large.

Whatever may be the functions of the pharmacist in the future, it is almost certain that the organization of the profession will not long remain unchanged. The Departmental Committee on the Poisons and Pharmacy Acts, which reported in 1930, made many important recommendations which it incorporated in a draft bill. The bill would already have become law, had it not been that it proposed a further extension of the right of persons not on the register to sell poisons. There was strong opposition to this proposal. The recommendations regarding the mode of regulating the profession were not seriously contested and are likely sooner or later to come into force. The Committee had no fault to find with the manner with which the Society had discharged its duties but only with the system under which it has to work. A tribute was paid to the Society whose services were called 'honourable and distinguished'.²

One of the most important proposals was in connexion with the schedule of poisons. At present the list cannot be amended save on the proposal of the Society approved by the Privy Council. In effect, therefore, the Society can render the position of its members still more privileged by enlarging the number of substances which they alone can sell. There is no suggestion that this power has ever been abused; but the principle involved is difficult to defend. It is proposed to transfer this power to a Poisons Board under the Home

¹ From a Memorandum by the Scottish Pharmaceutical Federation (*Pharmaceutical Journal*, vol. ciii (1919), p. 119). The pamphlet on Pharmacy in the *Choice of Career Series*, issued by the Stationery Office, stresses the change brought about by the increasing purity of proprietary articles and the consequential replacement of medical prescriptions by them, thus tending to reduce the professional side of the vocation. 'Probably the principal sources of profit nowadays are rather the side lines usually associated with the chemist's shop such as the sale of toilet and photographic requisites. While therefore the chemist and druggist is not essentially a salesman, a flair for business, especially when backed by possession of capital, is a great asset' (p. 5). The same pamphlet estimates that £500 are required to buy a small business.

² *Report of the Departmental Committee on the Poisons and Pharmacy Acts*, p. 5.

Office. Among other important recommendations are the following. All registered persons would *ipso facto* become members of the Society, and the Society would thus become an obligatory association like the R.C.V.S. Members would have to pay an annual fee to retain their names on the register. The Privy Council would appoint three members to the council of the Society. Power to erase names from the register and also to restore them would rest with a new statutory committee of five persons, four of whom would be appointed by the Society and one by the Privy Council. This committee would have power to act in cases, not only of offences against the Pharmacy Acts, but also of cases of unprofessional conduct. It will be seen that the general effect of these changes would be to assimilate the mode of regulation of this profession more closely to that found among the other professions belonging to the medical group.

Up to 1919 the Pharmaceutical Society had been performing what were virtually three different functions; it fulfilled its statutory obligations of examining and registering, it looked after the professional interests of pharmacists, and it also served to forward their trading interests. As the latter came more and more into prominence, the question arose as to how far the Society was empowered under its charter to take those steps which the trading interests seemed to demand. The opinions of counsel consulted were not unanimous, and the action of *Jenkin v. The Pharmaceutical Society* was brought as a test case in 1920. It was held that the Act of 1868 recognized as the only purposes of the Society those which were mentioned in the charter, and that this amounted to a statutory limitation of the powers of the Society. An injunction would therefore be granted to any member who showed that the Society was exercising the functions of an employers' association. In other words the Society could not regulate wages, prices, or hours of business, nor could it employ any part of its funds as a subscription to any body which proposed to do what the Society could not do. In consequence of this decision the Retail Pharmacists Union was set up. To this body was handed over all employers' functions, auditing, debt collecting, the keeping of an employment register and the function of negotiating with the Government regarding the provisions and working of the National Health Insurance Act. The Retail Pharmacists Union soon came to embrace practically the whole body of retail dealers among its members. It has shown itself to be most energetic in looking after the material side of the pharmacist's business, and among other activities has set up a salesmanship course by correspondence. It is

evidently determined that, whether or not the pharmacist is a professional man, he shall be a trader who does not lack any of the skill necessary for success in that line. On one occasion the chairman of the Business Services Section of the Union gave an address on salesmanship which he described as the 'weakest weapon in the pharmacist's armoury'. 'If a customer', he said, 'walks into a chemist's shop and asks for some Epsom salts, he will probably be asked "Yes, Sir, about twopenny worth?" If he walks into a tobacconist's and asks for a packet of cigarettes he won't be asked, "Yes, Sir, twopenny Woodbines?" He will be shown an expensive variety about 2s. or 2s. 6d. The tobacconist is not out to help the customer to save money—that is his job. But chemists do it over and over again. The salesmanship course deals with this subject as the ordinary trader sees it, and perusal by a pharmacist will be a wide education, and the adoption of the best principles will unquestionably react upon his pocket most beneficially.'¹

The formation of the Retail Pharmacists Union has left the Pharmaceutical Society free to concentrate upon its statutory duty of examining and upon the furtherance of professional as distinct from employer and employee interests. Before a candidate is registered as an apprentice or a student, he is required to pass an approved preliminary examination which is stated to be 'nearly equal to the standard of the London matriculation examination'.² Within five years from 1931 the standard is to be raised to that of matriculation. Professional training falls into three parts—a course at an approved institution leading to the preliminary scientific examination, a period under approved articles of pupillage and a course of instruction at an approved institution leading to the qualifying examination. Compared with the ordinary shopkeeper the pharmacist is a well-educated man.³

Since membership of the Society is voluntary and the material

¹ *Pharmaceutical Journal*, vol. cxiii (1924), p. 43.

² *Report of the Royal Commission on National Health Insurance*, Minutes of Evidence (1924), part iii, p. 532.

³ For an educated man the prospects are seen to be poor from the following quotation in the interpretation of which it should be remembered that many qualified men remain salaried all their lives. We are told that 'while retail pharmacy has good prospects in front of a person who is the owner of his business, the prospects in front of a person who may be compelled to remain an assistant or a manager cannot be said to be good' (*Some Notes upon Pharmacy as a Career*, 1929, p. 4). An inquiry into salaries made in 1924 showed that the pay of an assistant was from £4 to £5 a week and of a manager £5 to £7 or more. The employers have their organization which has been described, while the employees usually belong to some trade union. Three such societies accept pharmacists: the Amalgamated Society of Pharmacists, Drug and Chemical Makers, the Shop Assistants Union, and the National Warehouse and General Workers Union.

interests of employers and employed are otherwise provided for, it might be supposed that membership would be small. This is not so. In 1930 there were 15,053 members comprising 68 per cent. of the qualified. The proportion of those eligible who are members has been rising; it was 58 per cent. in 1918. This is clear evidence that pharmacists possess professional interests which lead them to associate voluntarily. The weekly *Pharmaceutical Journal* is devoted to these interests, and is chiefly concerned with matters arising out of the professional technique. The position is without parallel. 'The true pharmacist', it has been said, 'is a professional man by education and training and a tradesman by force of circumstances.'¹ However that may be, the professional aspect is menaced by the developments to which reference has been made. In America there are signs of a division between dispensers and drug-store keepers, and it has been suggested that, if to dispensing were added certain other functions, such as clinical analysis, there might arise a clearly marked profession, which would be safe from danger of submergence in a sea of commercialism.²

OPTICIANS

IN 1853 Helmholtz invented the ophthalmoscope and ophthalmometer, and it became possible to investigate the condition of the human eye and to measure and correct refractive errors. Ophthalmology has developed as one of the medical specialisms; but, though the ophthalmic surgeon or 'oculist' is consulted for eye-trouble by the richer section of the community, ordinary members of the public have always gone to the spectacle vendor. Spectacle vendors have long aspired to be more than tradesmen. They have undertaken sight-testing in addition to dispensing and have organized themselves on professional lines. Thus the British Optical Association, founded in 1895, limits admission to those who have been examined; while the Worshipful Company of Spectacle Makers, chartered in 1629 and active throughout the seventeenth century, has resumed the functions of a professional

¹ *Pharmaceutical Journal*, vol. c (1918), p. 297. The proper classification of the pharmacists is a puzzle to the legislature. The Apothecaries Act of 1815 refers to the 'Art Mystery or Faculty of Apothecaries', but to the 'trade or business of a chemist or druggist'. The Pharmacy Act of 1852 speaks with a less certain voice. It refers to the 'business or calling of pharmaceutical chemists'.

² *Ibid.*, vol. cvi (1921), p. 495.

body after two centuries of fossilization. Examinations were instituted in 1898, and since 1902 sight-testing has been included among the subjects set. The Company is not a protective association; and, in order to look after the interests of those who hold its diploma, the Institute of Ophthalmic Opticians was formed in 1905. The Institute does not itself examine, and its members must have the diploma either of the Worshipful Company or of the British Optical Association. It has been the constant endeavour of all three bodies to gain public recognition of the fitness of their members to prescribe as well as to dispense. With this object bills were promoted in 1903 and 1906, while the British Optical Association has twice, in 1906 and in 1919, petitioned for a charter. All these moves met with determined opposition from medical men and were defeated.

The controversy became acute after the War when ophthalmic (originally 'optical') benefit was instituted under the National Health Insurance Scheme. It was found that there were not enough ophthalmic medical men to provide the service and that in any case the approved societies could not pay their fees. There have been some half-dozen inquiries and numerous schemes and regulations.¹ Under the regulations made by the Ministry of Health in 1925 an insured person gets a recommendation for ophthalmic benefit from a panel practitioner, who is seldom an ophthalmologist. It then rests with the approved society whether the patient goes to an oculist or to an optician. The majority of societies send their members to opticians, and the opticians have been quick to seize their opportunity. In 1923 they formed the Joint Council of Qualified Opticians, consisting of representatives of the associations mentioned.² The Council has drawn up a 'register' of opticians who hold the diploma of one or other of the associations, and has made arrangements with many approved societies whereby the latter agree to send members certified for ophthalmic benefit to an optician on the 'register'. Encouraged by the success of this scheme, the Council, in 1927, promoted a bill for state registration, which was considered by a departmental committee. The committee were unable to present a unanimous report³ and the bill failed to become law. But the majority, though

¹ See *Report of the Departmental Committee on the Optical Practitioners (Registration) Bill (1927)*, Cmd. 2999, pp. 4 ff.

² And of opticians on the 'register'.

³ Since the committee failed to agree among themselves it is much to be regretted that they declined to recommend the publication of the evidence they took, for it is impossible to judge how far the different opinions had the weight of evidence behind them. Much information, however, can be found in the *Minutes of Evidence taken before the Royal Commission on National Health*

they reported against the bill, extracted a virtual undertaking from the medical profession 'to provide insured persons entitled to ophthalmic benefit with the services of oculists at an early date, and at fees within the limit of the funds from time to time available to approved societies'. They expressed the hope that the service would also be extended to the non-insured population. 'If, however,' they concluded, 'these hopes are not fulfilled within a reasonable time, we do not wish our Report to preclude the possibility of a reconsideration of the question in the light of the circumstances then existing.'¹ Spurred on by this threat the medical profession has set up the National Ophthalmic Treatment Board composed of representatives of the B.M.A. and of the Association of Dispensing Opticians. The Board arranges to give ophthalmic treatment to insured persons and their dependants, and also to others in similar economic circumstances, at fees which are considerably below those charged to the private patient, though they remain higher than those demanded by the sight-testing optician. There the matter rests for the moment.

It is a most unsatisfactory story. It is generally admitted that the qualified opticians are skilled refractionists, competent to measure and correct refractive errors. It is also admitted that a small percentage of those who have eye-trouble are suffering from disease and not from refractive errors. Opticians are not competent to treat disease, and on this account it is held by the medical profession that persons with eye-trouble should go to an oculist in all cases. Otherwise there is danger that disease will be overlooked and treated as though refractive errors were the cause—a danger which is not lessened by the fact that the optician is a shopkeeper and that it is to his financial interest to prescribe spectacles rather than diagnose disease. Yet, if we allow that 'it is essentially a task for the qualified medical practitioner to differentiate between cases requiring only mechanical treatment and other cases',² it becomes the more difficult to exonerate the medical profession from the charge of indifference to the needs of the community until there seemed a likelihood that the State might call in others to fulfil them.

Insurance, 1925, QQ. 17,483–18,029 and Appendices LX–LXIV; though the Commission did not regard it as coming within their province 'to consider the arguments for or against the testing of eyesight by persons other than medical practitioners' (*Report* (1928), Cmd. 2596, p. 44).

¹ *Report of the Departmental Committee on the Optical Practitioners (Registration) Bill* (1927), Cmd. 2999, p. 18.

² This was the conclusion which the Majority of the Royal Commission on National Health Insurance drew from the evidence before them; see their *Report* (1928), Cmd. 2596, p. 44.

So far, as we have observed, the State has declined to intervene. Can its inaction be justified? We think not. If the State is to finance the ophthalmic treatment of a section of the population, it must be satisfied as to the quality of the treatment given, and this implies registration. Whom then should the State register? The right to be registered should not be given to medical men as such, since the majority of medical men are without ophthalmic qualifications. Nor should it be conferred upon opticians, whether 'qualified' or not. It has been contended by some that the 'qualified' optician, though not competent to treat disease, is at least able to detect its presence. Nevertheless the weight of responsible opinion is the other way, and it is most undesirable that, where a vital service is in question, the State should confer its hall-mark except upon persons whose qualifications to perform the service are incontestable. Still less should the State countenance the performance of a function of this kind by persons whose interest it is to sell appliances to those who consult them. Are we then led to conclude that the register should be confined to medical men with ophthalmic qualifications and to them alone? To do so would be greatly to increase the cost of the Insurance Scheme or to deprive many persons of much needed facilities under it. Moreover it does not seem to be necessary that those who treat patients for eye trouble should have gone through the entire medical curriculum. Dentists receive some medical training, and no objection is taken by the medical profession to the administration of dental treatment by persons who are not fully qualified doctors. It appears to us that there should be a register of ophthalmic practitioners similar to the dentists register, except that a medical man would not be entitled to registration unless he could show specific ophthalmic qualifications; but to ensure that cases requiring attention or treatment beyond the skill of the general ophthalmic practitioner were referred to the proper quarter, registered persons would be absolutely forbidden to have any interest in the manufacture or sale of spectacles.

MASSEURS AND BIOPHYSICAL ASSISTANTS

THE story of the opticians is one in which territory has been in dispute with the medical profession; the position is embittered and unsatisfactory. The present story runs quite differently; we are concerned with the assistants and not with the competitors of

doctors. The medical profession has been solicitous in relation to the competence of these assistants and has helped with their organization.

The Incorporated Society of Trained Masseuses was founded in 1894 'to raise the standard of massage and to improve the professional position of women taking up that work'.¹ In 1905 it was opened to men. Examinations were instituted, certificates granted, and a register kept. Such prestige accrued to the holders of certificates that other persons were seldom employed by medical men. In 1920 a Royal Charter incorporated the previous Society as the Chartered Society of Massage and Medical Gymnastics. In addition to certain honorary members, who are not to be replaced when vacancies occur among them, and to representatives of the local branches of the Society, the Council consists of sixteen members elected by the certificated practitioners and eight co-opted members, three-quarters of whom at least must be medical men. The Society approves schools of training and holds periodical examinations. By the ethical rules they are forbidden to undertake a case except under the direction of a registered medical practitioner, to sell goods to patients, to accept commissions, and to advertise except in certain prescribed fashions, such as in a professional journal. The members have no privileges secured to them in relation to monopoly of practice, but it so works out that they are almost exclusively recommended by doctors, and in fact obtain most of the practice in this field.

The biophysical assistants are of more recent origin. At the suggestion of the B.M.A. the Society of Apothecaries has instituted a roll of assistants who have been examined and are in possession of a diploma; the roll was first published in 1930. 'We regard it,' says the B.M.A., commenting on this development, 'as a first step in the control of the new class of medical technicians or dispensers of physical forms of treatment. It is most important that all such technicians or dispensers should be under the control of the medical practitioner and their work placed on an ethical basis. We believe that the present register is a valuable means towards attaining this aim, and we therefore appeal to all practitioners, in so far as they are able, to send their patients who require such treatment to properly registered dispensers with confidence that those holding the certificate of the Society of Apothecaries, which entitles them to use the suffix B.P.A., possess the proper skill and training and are under the control of an ethical code.'²

¹ *Charter of the Chartered Society of Massage and Medical Gymnastics (1920)*, preamble.

² *British Medical Journal* (1930), vol. i, p. 1013.

THE MERCHANT NAVY

THE vocation of sea captain is of great antiquity and has long been of importance in the eye of the State. The Merchant Shipping Act of 1854, however, ushered in a new era, and we need not concern ourselves with the conditions then swept away. The system set up in that year has been expanded and modified by many amending Acts, of which the most important was passed in 1894.¹ These Acts incorporate a vast code, the greater part of which has no bearing upon the matter in hand. But there are certain sections which govern the conditions of entry into the profession of officer in the Merchant Navy. The key to admittance is kept by the Board of Trade, but ejection, as will appear, is usually by sentence of a court.

Under the Merchant Shipping Acts every foreign-going British ship, every British home-trade passenger-ship, and every trawler of twenty-five tons and upwards must carry a number, varying with the ship, of certificated officers of various grades.² Certificates to serve as master, mate, or engineer are granted by the Board of Trade to persons who produce evidence of good conduct and of a defined amount of practical experience and who have passed a qualifying examination. The Board of Trade defines the requirements which differ for navigating and engineer officers. At one time the necessary practical experience of the former was wholly obtained at sea, and may be still so obtained, but it is now possible to gain part of the necessary practical experience at an approved training establishment. There are four such establishments, three of which are training ships, while the fourth is at Pangbourne, which take boys of fifteen to sixteen; there are also seven nautical schools, five of which are non-residential, to which cadets can go from an elementary school. The former are allowed a remission of one year, and the latter a remission of six months, of the four years practical training at sea otherwise required. The recent tendency has, therefore, been to permit a part of the practical training to be taken at institutions instead of at sea. The same tendency may be observed regarding the practical experience demanded from engineer officers. Time spent at an approved technical school is accepted in lieu of part of the obligatory sea service.

Armed with evidence as to character and as to practical

¹ The Merchant Shipping Act of 1850 provided for the compulsory carriage of certificated officers on foreign-going ships, which was extended to home-trade passenger-ships in 1854.

² It follows that closure of the profession is not watertight. There is no compulsion on coasting cargo vessels to carry certificated officers.

experience, a candidate may present himself for examination. Examinations are held at various ports under the supervision of the local marine board. These boards consist of certain *ex-officio* members, the mayor, for instance, four persons appointed by the Board of Trade, and six members elected by owners of ships. One or two of the members nominated by the Board of Trade are usually appointed because they represent the professional associations of officers, and to this extent the profession shares in the work of the boards. The duties of the boards in relation to examinations are, however, limited. They are responsible for seeing that they are properly conducted and for little else. The Board of Trade has general authority over the boards, and if the arrangements made are inadequate, it may alter or amend them. Moreover the Board of Trade is solely responsible for the examination syllabus and appoints the examiners.

Those who pass the examinations are granted a certificate and their names are entered on a register kept by the Board of Trade. Under the Merchant Shipping Act of 1906, the Board has power to appoint a Merchant Shipping Advisory Committee to which it may refer matters for consideration. The recognized professional associations to be mentioned later are invited to nominate representatives. Important subjects mainly dealing with safety of life at sea are referred to this body for report. It has been asked, for instance, to consider the regulations as to the carriage of timber deck loads and the conditions under which vessels should be exempted from carrying wireless. From time to time special committees are set up to deal with particular questions affecting the Merchant Navy and its personnel, and it is usual to nominate as members persons connected with the chief professional associations. Thus in 1927 a departmental committee was appointed to 'consider the present system under which candidates for certificates as Master or Mate on Merchant Ships are examined by the Board of Trade'. Representatives of the Imperial Merchant Service Guild and of the Mercantile Marine Service Association were members of this committee. To this extent the opinions of the members of the profession are taken into account, and use is made of their experience by the Board of Trade in the exercise of its autocratic powers.

In respect of expulsion the powers of the Board of Trade are strictly limited. Under the Act of 1894, the Board has power to cancel or suspend the certificate of an officer who has been convicted of any offence. It appears that use is made of this provision only in rare cases. A certificate can be cancelled or suspended

by two other modes of procedure. If there is reason to suppose that an officer is unfit to discharge his duties by reason of incompetency or misconduct, the Board can institute an inquiry and entrust it to a court. For this purpose a court may be a local marine board, a court of summary jurisdiction, or a person specially appointed, and such a court can deal with a certificate. Again there is similar power given to a court holding an inquiry into a shipping casualty. The noteworthy fact is that the penalty of suspension or cancellation strikes only at technical incompetency. Misconduct here is not misconduct according to the canon of any ethical code but conduct which implies inefficiency. The failure to obey the rules of navigation might be evidence of inefficiency and so also might drunkenness. In the latter case it is not the immorality of drunkenness which is struck at but the inefficiency consequent upon it.

Voluntary associations have been prominent in the history of the profession. The Mercantile Marine Service Association dates from 1857. In its capacity as a representative body of masters and navigating officers it has done much to improve their conditions. It inaugurated the training establishments *Conway* and *Indefatigable*, and the *Conway* is under its complete control. It began its benevolent work in the year 1870, and in this direction its ramifications are very wide. It has a substantial annual income, which is used for various benevolent purposes, including the assistance of masters and navigating officers in necessitous circumstances through long unemployment. It has representatives on the National Maritime Board, to be mentioned later, and maintains an unemployment register. The Association co-operates harmoniously with two bodies of more recent origin, which undertake such of the duties falling to professional organizations as are open to them in a profession where considerable legal powers are vested in a department of state. The Imperial Merchant Service Guild was founded in 1893 and caters for masters and navigating officers of the Merchant Navy.¹ The Marine Engineers' Association, founded in 1887 as a Marine Engineers' Union, caters in a similar way for engineer officers. These two societies gained their dominating positions after a long struggle. When the Guild was first founded there were in existence no fewer than five other organizations—all of a good many years standing—claiming to represent the profession.² By 1917 complete unity of action and purpose had been achieved,

¹ Full membership of the Guild is limited to certificated captains and navigating officers. The proposal to include skippers and first and second hands of fishing vessels has often been considered but has not been adopted. Employers are not admitted to membership either of the Guild or of the Association.

² See *The Guild Gazette* (August 1919), p. 36.

and since that time the three bodies have worked together in the closest co-operation.

The position of these bodies has been made difficult by the appearance of two other organizations. The Merchant Service League came into existence after the War, and was for a time enthusiastically supported owing to the inducements which it offered. It collapsed ignominiously after a life of three years. In 1921 the Navigators and General Insurance Company was formed. It offers policies at rates considerably lower than the annual subscriptions to the three organizations mentioned, and policy-holders are indemnified against the suspension or cancellation of their certificates. It is said to have 8,000 officers of the Merchant Navy among its clients, few of whom are members of a professional association.

How does it come about that so many officers stand outside the professional associations? The explanation is to be sought in the history of the salary problem. Early in its history the Guild took up the question of remuneration with vigour and was prosecuting a campaign before the War. The Shipping Federation, representing shipowners, finally issued a scale of salaries which represented an improvement, though they took this step without consultation with the professional associations. The scale was not observed by all shipping companies, and the Guild was advancing towards the position that an officer who accepted a salary below the scale was acting against the interests of his brother officers.¹ Such was the position when the War broke out. Great difficulties were then encountered, and both parties welcomed the proposal to establish a Joint Industrial Council in 1917 under the title of the National Maritime Board, upon which all three associations have representatives. This Board has been one of the most successful of Joint Industrial Councils; the latest report of Imperial Merchant Service Guild says that officers 'can congratulate themselves upon the existence' of the Board, and goes on to add that no case is known where a firm does not pay at the recommended scale.² But the smooth working of the Board and the general satisfaction which its decisions have given are a cause of difficulty to the associations affiliated to it. Many officers seem to forget the part which these associations play on the Board in safeguarding their pay and other material conditions. It comes about that many of them imagine that the Board can function without any effort on their part, and are content to support other ventures and to rest

¹ *Ibid.* p. 40.

² *Imperial Merchant Service Guild: Annual Report (1931)*, p. 14.

content on being indemnified against cancellation or suspension of certificates.

These and other achievements, such as the work of the Guild Parliamentary Committee, have not fulfilled all the ambitions of the associations. It is stated for instance that 'the purpose of the Guild is to unite into one great body the certificated captains and officers of the British Merchant Service and thus enable them to demand and obtain a direct voice in the making of the laws and regulations under which they are governed'.¹ It is significant that self-government is placed first among the objects of the Guild. The demand for a measure of self-government is neither unreasonable nor impracticable. But it would not seem that the ideal of self-government makes any strong appeal or that it has been formulated in any definite programme. The circumstances under which the officers of the Merchant Navy live and carry out their duties are peculiar. They pass their working days upon what was formerly described as another element. They are conscious of sharing in common experiences which are wholly foreign to the landsman. But while they are thus drawn together, they are led to look at self-government from an unusual angle. By the nature of the case the profession is a hierarchy and each officer has his allotted station. They are as accustomed to subject themselves to discipline as they are to exact it. Their mood is to accept a system ordered from above. There is little scope for the growth of self-government in the usual fashion since no element of the committee system can enter into their daily lives. But this does not render unworkable or undesirable a system whereby a share of the responsibility for the making of rules governing entry and expulsion is given to the profession as a whole.²

¹ *Imperial Merchant Service Guild: Rules and Regulations* (1927), p. 13.

² Pilots are also under the Board of Trade. The Board sets up pilotage authorities, and there are provisions under which pilots may be represented on these bodies. The authorities grant licences to pilots and may limit their number; they also grant pilotage certificates to masters and mates. Licences and certificates may be suspended or revoked by pilotage authorities when they find the holder guilty of a breach of a by-law or of any other misconduct affecting his capability as a pilot, or when they find that he has failed or neglected his duty as a pilot or has become incompetent to act as a pilot. In the case of the suspension or revocation of a pilotage certificate there is an appeal to the Board, whose decision is final. In the case of the suspension of a licence there is an appeal to a county court judge or to a stipendiary magistrate. The judge or magistrate must sit with an assessor of nautical and pilotage experience, and with his leave there is an appeal to the High Court.

MINE MANAGERS

HAD there been no Merchant Shipping Acts the officers of the Merchant Navy would still have formed a distinct group, though not so clearly marked off as is now the case. In the absence of any Coal Mines Acts mine managers would not have separated out as a class. The group which they now form has been created by statute.

The Coal Mines Regulation Acts of 1872 and 1877 made provisions for granting certificates. The Coal Mines Regulation Act of 1887 laid down that every coal mine, where thirty or more persons were employed underground, must be under the daily personal supervision of the holder of a certificate. Boards were set up in different parts of the country to conduct the examination of candidates for certificates under the control of the Home Office. Under the Coal Mines Act of 1911, the provisions relating to the duties of managers and to the holding of examinations were revised.¹ The owner or agent of a mine is not to take any part in the technical management unless he is certificated, and a manager must not have an indefinite number of mines under his control. In place of the local boards, a Board for Mining Examinations is set up, consisting of six representatives of owners or agents of mines or of managers of mines or mining engineers, six representatives of workmen employed in mines, three inspectors of mines, and two persons eminent in mining knowledge. The members are appointed by the Board of Trade, and subject to its approval, they frame regulations for the examination and the qualification of candidates, appoint examiners, and hold examinations.² Certificates are granted to those who pass, and their names are entered upon a register kept by the Board of Trade. If it is reported to the Board of Trade that any person holding a certificate is, 'by reason of incompetency or gross negligence or misconduct in the capacity of . . . manager or under-manager of a mine, unfit to continue to hold a certificate of competency', the Board may cause an inquiry to be held by a court.³ The court may consist of a county court judge, a stipendiary magistrate, or other persons, and may include assessors as the Board of Trade determines. The court has power to cancel or suspend a certificate.

¹ The mines to which this Act applies are 'mines of coal, mines of stratified ironstone, mines of shale and mines of fireclay'.

² The Act of 1911 was administered by the Home Office until 1920, in which year the Mining Industry Act established a Mines Department of the Board of Trade under a Secretary for Mines.

³ 1 & 2 Geo. V, c. 50, s. 11 (1).

The position of the mine managers is closely similar to that of the officers of the Merchant Navy. In neither case do the members of the vocation take any part in the procedure by which certificates may be cancelled on account of negligence. As regards the granting of certificates, it is true that a Board for Mining Examinations has been set up which has no counterpart in the Merchant Navy. But the existence of this Board hardly implies any measure of self-government in the matter of entrance to the profession. Out of a total of seventeen it includes only one or two managers, and they, like all the other members of the Board, are appointed by the Board of Trade and may at any time be removed by the same authority. The Board of Trade can, and in fact does, determine the subjects set in the examinations and the standards required.

The legislation of 1887 marked off the occupation of mine managers, and in that year the National Association of Colliery Managers was formally constituted. There had been some tentative legislation before that date and some degree of voluntary association, and the part played by legislation in the segregation of the vocation is obvious. The Association was formed in order, among other objects, 'to improve the social, scientific and intellectual position of Colliery Managers, and to support and protect their character, status and interests generally . . . to originate and promote improvements in the law and to support or oppose alterations therein and to effect improvements in administration and for the purposes aforesaid to petition Parliament and take such other steps and proceedings as may be deemed expedient'.¹ The Association includes nearly 90 per cent. of the colliery managers in this country. In late years owing to the difficult times there has been some falling off in membership; but from the point of view of organization it has been a successful association.

What use has it made of its opportunities? A study of the journal of the Association reveals some interest in education. The need for a higher general level of education has been stressed, and the claim has been made for a degree of control over the educational system by members of the vocation.² But such matters receive little attention. On the other hand great interest is shown in technical and safety devices, and on these and similar matters the Association is frequently consulted by the Board of Trade. 'We are taken into the confidence of His Majesty's Governments, whatever their colours, . . . to an extent of which we once only

¹ *Memorandum of Association of the National Association of Colliery Managers*, clauses 3a and c.

² *Minutes of Proceedings of the National Association of Colliery Managers*, vol. xvii (1919-20), p. 18, and vol. xx (1922-3), p. 319.

dreamed', said the President of the Association in 1926.¹ These matters are commonly referred to in the journal as problems of 'management'. How narrowly the Association interprets 'management' may be seen from the evidence which it gave before the Royal Commission of 1925. At a meeting of the Council of the Association in 1919 a speaker said that 'they were a body who could tell the Home Office in a higher degree than any other association what was the best method of managing the collieries of this country'.² To the speaker this meant merely giving advice about safety devices and so on.

The Association does not in fact concern itself with problems of management in the broader sense. It has not interested itself, for instance, in marketing or in the grouping of mines. Problems of management in any industry may raise political issues, but it is usually possible to discuss them without entering upon the field of controversial politics. In this industry it is especially difficult to keep clear of politics both because parliamentary regulation is always being discussed and because mine owners are apt to discover political motives behind any proposals for change.³

That the Association has been under the necessity of regarding the susceptibilities of mine owners is apparent from its attitude to problems of remuneration. 'In early days the Association was looked upon with suspicion in many quarters',⁴ but this suspicion was soon dispelled by the care which was taken not to adopt any collective action in matters of remuneration. Some few years ago the President 'took occasion to again contradict the assertion that the National Association of Colliery Managers was a trade union. The negotiations between a colliery manager and his owner with regard to terms and conditions of employment were an individual matter. If, however, a colliery manager had a grievance and reported it to the branch council, they would by means of good will and conciliation try to remedy it.'⁵ But this care not to appear in the guise of a trade union, a form of association none too popular

¹ Ibid., vol. xxiii (1925-6), p. 20.

² Ibid., vol. xvii (1919-20), p. 144.

³ The managers also tend to regard themselves as bound to the owners in such a fashion that any discussion which might be regarded as political is ruled out. 'To be at all successful and able to discharge his duties efficiently', it has been said, 'a colliery manager, as the owners' representative, must have the owners' interest entirely at heart, and should feel that he is part and parcel of the concern he is controlling and not in any way antagonistic to his employers.' Ibid., vol. xx (1922-3), p. 458.

⁴ Ibid., vol. xxiii (1925-6), p. 23.

⁵ *Minutes of Proceedings of the National Association of Colliery Managers*, vol. xix (1921-2), p. 379.

with mine owners, is not due to any dislike of collective action on the part of the managers. When the report of the Sankey Commission brought nationalization for the moment upon the political horizon, there arose a discussion concerning a modification of the rules of the Association which would enable it to take effective trade-union action.

The object of this legislation, in so far as it related to the certificating of mine managers, was to ensure their efficiency in the interests of safety.¹ The Act of 1911 laid down that the examinations for the certificate should have regard to technical competence; it did not exclude tests of general education, but such tests were not applied. The Royal Commission on the Coal Industry of 1925 took note of this situation and made the following comment:

'We are deeply impressed by the necessity of securing in this vital industry its full proportion of all the exceptional ability in the nation, and of men of broad views and imagination. . . . Upon the nature of the entrance into any occupation will depend the kind of men who enter; upon the kind of men who have to manage coal mines, more than any system that can be laid down for their management, will depend the prosperity of the industry and the well-being and contentment of the miners.'²

The Commissioners recommended that the examination regulations should be reconsidered. The Mining Industry Act of 1926 enables the Board of Trade, after consultation with the Board for Mining Examinations, to vary the provisions of the Act of 1911 so far as may be 'expedient for the purpose of adapting them to the needs of the industry and the progress of education'.³ In 1927 new rules were issued which mark a small step forward towards the broadening of the examinations. The situation is complicated by the very strong tradition in this industry of promotion from the ranks. This means that there is little opportunity for liberal education before technical studies begin. The legislation has been successful in that it has produced a high level of technical competence; it has failed in that it has neglected the broader aspects of professional competence.

¹ The Board for Mining Examinations grants first-class certificates which are required by managers, second-class certificates for under-managers, and certificates for mine surveyors. It also lays down the requirements which must be fulfilled by those who are appointed deputies and overseers.

² *Report of the Royal Commission on the Coal Industry (1925)*, (1926), Cmd. 2600, p. 190.

³ 16 & 17 Geo. V, c. 28, s. 22.

ENGINEERS

THE definition of civil engineering contained in the charter of 1828, which incorporated the Institution of Civil Engineers, is famous. It is there stated that certain persons had formed themselves into a society 'for promoting the acquisition of that species of knowledge which constitutes the profession of a Civil Engineer, being the art of directing the Great Sources of Power in Nature for the use and convenience of man'.¹ In the words which follow an attempt is made to be more exact, and mention is made of roads, bridges, aqueducts, canals, docks, harbours, lighthouses, marine engines, machinery, and drainage. It is clear enough that the promoters intended to take all engineering for their province.² The boundaries of the province, however, are not easy to discern; the frontiers of engineering were then, and still remain, hard to define. In a statement made on behalf of the Association of Consulting Engineers it is said that 'it is quite impossible to draw any hard and fast line between the professional services rendered as an architect and those rendered as a civil engineer'.³ It is not only laterally but also vertically that it is difficult to delimit the profession. There are innumerable small gradations in skill, knowledge, and experience between the lower ranks of the Amalgamated Engineering Union and the leaders of the profession. The position is further complicated by reason of the fact that some highly skilled engineers are partners in firms and that some men of business have a considerable acquaintance with engineering.

There are other characteristics of engineering, which it is even more important to mention at the outset in order that the organization and activities of the practitioners may be understood. 'An Engineer is a mediator between the Philosopher and the working Mechanic, and like an interpreter between two foreigners, he must understand the language of both.'⁴ In other words he is applying to concrete problems in the everyday world the results of abstract

¹ *Charter of the Institution of Civil Engineers*, 1828.

² This is so in spite of some surprising omissions from the list. Nothing is said about the steam engine. Locomotives were new, though the Stockton and Darlington Railway was opened three years previously. No mention is made of mining or of gas engineering, though engineers had long been employed about mines, and gas lamps had been seen in London for a generation.

³ *Report of the Select Committee on the Architects (Registration) Bill* (1927), p. 223.

⁴ Quoted in *A Brief History of the Institution of Civil Engineers* (1928), from a paper by Henry Robinson Palmer, read at the inaugural meeting of the Institution of Civil Engineers in 1818.

study. It is the case that all scientific professions are built upon pure research; but the position of the engineer is peculiar in that, while laboratory knowledge is here also the essential foundation, it is never the whole basis of his technique. 'The most valuable tests of materials and machinery are those which take place under normal working conditions such as obtain in ships, ship-yards or with a vessel and her engine at sea.'¹ 'Normal working conditions' can seldom be produced in an engineering laboratory, and therefore the engineer must conduct observations and experiments himself. He is thus led to found associations, the primary purpose of which is the collection, analysis, and publication of the information drawn from his own daily experience. As the range of engineering grows, so the need for specialist associations arises. Upon specialist study associations, which originate in this manner, the modern organization of the engineering world is built.

The history of the parent society, the Institution of Civil Engineers, is a story of evolution on these lines; the civil engineers were so called to distinguish them from military engineers. Civil engineering came into existence in the eighteenth century. In 1733 James Brindley was apprenticed to a millwright, and

'the millwrights were as yet the only engineers. In the course of their trade they worked at the foot-lathe, the carpenter's bench, and the anvil by turns. . . . Necessity thus made them dexterous, expert, and skilful in mechanical arrangements, more particularly those connected with mill-work, steam engines, pumps, cranes and such-like. Hence millwrights in these early days were looked upon as a very important class of workmen. . . . On occasions of difficulty the millwright was invariably resorted to for help; and as the demand for mechanical skill arose, in the course of the progress of manufacturing and agricultural industry, the men trained in millwright's shops, such as Brindley, Meikle, Rennie, and Fairbairn, were borne up by the force of their practical skill and constructive genius into the highest rank of skilled and scientific engineering.'²

It may be that the place of the millwright in early engineering is overstressed in this passage; Rennie went to Edinburgh University and merely amused himself in a millwright's shop for a year or so previously; Smeaton was the son of 'a respectable attorney' and had no connexion with any millwright. The great engineers of the eighteenth century were in fact of very mixed origin and of very different standards of education. Rennie and Smeaton were

¹ E. W. Fraser-Smith and T. S. Nicol ('An Outline of the History of the North-East Coast Institution of Engineers and Shipbuilders'), *Syren and Shipping*, April 1930.

² S. Smiles, *Lives of the Engineers* (1861), vol. i, p. 312.

fellows of the Royal Society; Brindley 'could scarcely read . . . neither could he write except with difficulty'.¹

Consciousness of common interests led to the founding in 1771 of the Society of Civil Engineers which 'took its rise from the following circumstances. Before or about the year 1760, a new era in all the arts and sciences, learned and polite, commenced in this country. Everything which contributes to the comfort, the beauty and the prosperity of a country, moved forward in improvement, so rapidly, and so obviously, as to mark that period with peculiar distinction. . . . Manufactures were extended' to new areas where they were not 'plagued with the miserable little politics of corporate towns, and the wages of their extravagant workmen'. Then came the need for canals, harbours, bridges, and works of all kinds, and to supply them arose the civil engineers, 'a self-created set of men, whose profession owes its origin, not to power and influence'. One of them proposed to Smeaton 'that it would be well, if some sort of occasional meeting, in a friendly way, was to be held . . . that thus the sharp edges of their minds might be rubbed off, as it were, by a closer communication of ideas, no ways naturally hostile; might promote the true end of public business upon which they should happen to meet in the course of their employment'.² Smeaton approved the idea and the Society of Civil Engineers came to birth as a dining club. In 1792 the Society was dissolved, but it was reformed in the following year and still exists to-day.

This Society did not satisfy the needs of the growing body of civil engineers; and in 1818 the Institution of Civil Engineers was founded by eight young men, of whom Henry Robinson Palmer was the leader, with the object of 'facilitating the acquirement of knowledge necessary in the civil engineering profession and for promoting mechanical philosophy'.³ In 1820 Thomas Telford

¹ S. Smiles, op. cit., vol. i, p. 471; vol. ii, p. 4. The following passage summarizes the story with a slightly different emphasis upon the facts. 'Between 1740 and 1760 we find him (James Hargreaves) settled in the neighbourhood of Blackburne in Lancashire where he combined the trades of weaver and carpenter. It was no doubt in his capacity as carpenter that he came to deal with machinery. At that time, when there were no professional engineers, their place was more or less filled by carpenters, locksmiths or clockmakers, in fact by any one who was sufficiently used to working in wood or in metal and could set up wheel work or fit parts of machinery together. Among these emergency engineers a special place must be given to the millwrights whose help was essential to the setting up of the first factories.' (P. Mantoux, *The Industrial Revolution in the Eighteenth Century* (1928), p. 221.)

² *Reports of the late John Smeaton* (1812), vol. i, pp. ii to vi.

³ See J. H. T. Tudsbury, 'Record of the Origin and Progress of the Institution', *Minutes of Proceedings of the Institution of Civil Engineers*, vol. ccv (1917-18), Part I, p. 216.

became president, which office he held for fourteen years; owing largely to his influence the Institution was incorporated by royal charter in 1828. Since its inception the Institution has served as a study association; nearly 5,000 papers have been presented as well as numerous addresses, lectures, and reports of researches initiated by the Institution. The planning of research, under committees appointed for the purpose, has been a feature of the work of the last twenty years; a systematic record of this side of its work is contained in the *Proceedings*, the publication of which began in 1837.

For the first fifty years of its existence the activities of the Institution were confined to study. During these years facilities for obtaining academic instruction in engineering underwent great development. Courses were instituted in many colleges and technical institutions. The promoters of University College planned to fill a chair of engineering at its opening, though their intention was not carried out for some years. King's College had a department of engineering in 1838. Chairs of civil engineering were founded in Glasgow in 1840, in Edinburgh in 1868, and in Cambridge in 1875. In these developments the Institution displayed little or no interest. But high qualifications of a practical kind had always been required of entrants, and as time went on the Institution was led to consider the place of academic training in the making of an engineer. In 1866 the President, Sir John Fowler, devoted his address to the problem of engineering education. Since that time education has become one of the chief preoccupations of the Institution; reports were issued on this subject in 1870, 1891, 1903, 1914, and 1921. But it was some years before academic training was recognized as necessary or even as desirable. Mr. Anderson, himself a member of the Institution, told the Royal Commission on Technical Education in 1884 that

'it is looked upon as a great thing to be a member of the Institution of Civil Engineers, but unfortunately membership does not imply scientific training. . . . There are plenty of members of the Institution of Civil Engineers who have hardly any scientific knowledge at all. . . . An apprentice at my works, without the smallest scientific training, can become a student at the Institution of Civil Engineers, then he can become an associate, and by and by a full member, having had all the time no scientific training at all.'¹

Eventually in 1897 the Institution set up its own examinations, thus,

¹ *Second Report of the Royal Commission on Technical Instruction* (1884), vol. iii, p. 177.

after moods of hostility, doubt, and indifference, setting its approval upon academic training as an essential part of the education of an engineer. There are grades of membership, corresponding to different degrees of attainment and experience, and thus forming a hierarchy. Associates must be over twenty-five and have passed either the examinations of the Institution or an approved examination and have undergone a specified period of practical training. Members must be over thirty-three and have been associates with five years' experience in a position of responsibility, or have had 'suitable education and training as a civil engineer', and fifteen years employment in a position of responsibility and have acquired 'a considerable degree of eminence in the profession'.¹ It is thus possible to be admitted to the highest grade without examination. This hierarchical system has been built up as the result of many constitutional changes. At its foundation the Institution consisted of members and honorary members; the most important change was the addition of the class of associates in 1846.

This interest in the qualifications of its members, which made the Institution a professional and not merely a study association, was never limited to technical qualifications.

'Even in the original rules of 100 years ago provision was made to remove any person whose action might be regarded as inimical to the interests of the general body; and whilst these provisions were amplified from time to time, it was not until 1910 that rules were formulated to govern the professional conduct of the members. The general purport of these rules is to ensure that the engineer's utmost skill shall be placed at the disposal of those who employ him, and that the method of his remuneration shall not involve any conflict between his personal interests and those of the clients whom he advises.'²

The annual report of the Council always makes some reference to its exercise of the duty of regulating professional conduct; but while warnings and reproofs are given, expulsion seems to be rare.³

As the interests of the Institution widened, it extended its activities. Attention, for instance, was drawn to the need for standardization, and in 1901 the Institution appointed a committee, subsequently known as the Engineering Standards Committee, to inquire into the advisability of standardizing rolled iron and steel

¹ By-laws and Regulations of the Institution of Civil Engineers, s. 11.

² J. H. T. Tudsbury, *op. cit.*, p. 221. The rules will be found in Appendix IV.

³ The Report of the Council for 1924-5 mentions one case of expulsion. In another instance in the same year expulsion was obviated by resignation. In some years no expulsions are mentioned.

sections. The co-operation of the Institutions of Mechanical Engineers and of Naval Architects, and later of Electrical Engineers, was invited. Subsequently most of the senior engineering associations came in. In 1903 the importance of the work was recognized by a grant from government funds. In 1918 the Committee was incorporated as the British Engineering Standards Association. It receives annual contributions from the Government, public authorities, trade associations, private companies, and the engineering associations. The latter contribute individually up to £500 annually. The value of this work in standardizing engineering products cannot easily be over-estimated, and is an example of the desire of the skilled practitioner to see waste eliminated, orderly production established, and his craft practised to the greatest advantage. The Institution has thus come to play a part in public affairs. It has been led to do so because it is the depository of skill and experience in engineering matters. The Government and public and private bodies have had recourse to it for advice as its prestige grew.

The Institution of Civil Engineers is the parent body and round it has sprung up a numerous progeny. The birth and growth to stages of varying importance of these daughter associations has been accomplished with an almost complete absence of jealousy, rivalry, and friction. These happy circumstances may be attributed to the fact that new specialist associations have arisen only when engineering progress demanded further opportunities for specialist study. New associations have not been founded as rivals in the same field of interests nor as rivals for membership. These daughter associations have modelled themselves upon the parent society. They have hierarchical constitutions, hold examinations, and attempt to raise the market value of membership by increasing their prestige. Membership of the parent institution often admits to membership of the newer bodies without any further examination and is in fact a kind of *passe-partout* in the engineering world. There is in consequence much overlapping of membership. The examinations held by the newer bodies are usually somewhat less difficult and at the same time more specialized than those of the parent body.¹ As this process of specialization has progressed, the parent body, though still in theory taking all engineering for its

¹ As set out above, admission to the Institution of Civil Engineers is possible under certain circumstances, without examination, but the conditions, to be fulfilled are stringent. In the case of the other engineering Institutions exemption from examination is easier to obtain. To pass an examination in order to become a member of a professional institute is less obligatory in engineering than in any other great profession.

province, has come to limit itself to constructional works, such as bridge building, the making of tunnels, dams, reservoirs and so on, which are therefore now known as constituting 'civil engineering'.

The first group of engineers to build up a specialist organization were those whose work was related to machinery, and especially to the steam engine. The Institution of Mechanical Engineers was founded in 1847, George Stephenson being the first president.¹ Its history in relation to education and other matters is much like that of the parent body. Examinations were first held in 1913. It has been little active in relation to status; at a recent annual meeting a member inquired what the Institution was doing 'to improve the status of the mechanical engineer'.² This unexpected intervention seems to have been very coldly received. An interesting public activity of this Institution is in connexion with a scheme for granting national certificates and diplomas in mechanical engineering, which is worked in conjunction with the Board of Education. Students of technical colleges and schools, approved jointly by the Board and the Institution, who pass examinations under their supervision, are granted diplomas signed on behalf of the Institution, the Board, and the head of the school or college concerned. The Institutions of Civil and Mechanical Engineers, together with the Institution of Naval Architects, founded in 1860, and the Institution of Electrical Engineers, founded in 1871, form the 'big four' of the engineering world.³ Membership is large; the civils and mechanicals have about 10,000 each, the electricals about 11,500, and the naval architects about 3,000. Generally speaking these bodies stand more or less on an equality as leaders in their own section of the field.

Among the junior institutions mention may be made of the Institution of Mining Engineers (founded 1889, about 3,800 members), the Institution of Sanitary Engineers (founded 1895, about 600 members), the Institution of Water Engineers (founded 1886, and 500 members), the Institution of Heating and Ventilating Engineers (founded 1897, about 600 members), the Institution of Gas Engineers (founded 1902, about 1,000 members), the

¹ Stephenson was not a member of the Institution of Civil Engineers. He had never served a regular apprenticeship. The Institution was prepared to waive this requirement in his case, but insisted upon his filling up a form giving details of his experiences. This he was unwilling to do. S. Smiles, *op. cit.*, vol. iii, p. 479.

² *Proceedings of the Institution of Mechanical Engineers* (1926), p. 275.

³ The Institution of Electrical Engineers operates a scheme for granting national certificates similar to that operated by the Institution of Mechanical Engineers.

Institution of Automobile Engineers (founded 1906, about 1,200 members), the Institution of Structural Engineers (founded 1908, about 3,500 members), the Institution of Aeronautical Engineers (founded 1920), and the Institution of Chemical Engineers (founded 1927).¹ Membership in the case of all these associations is confined to those who possess certain minimum qualifications. Most of these associations hold their own examinations and they all interest themselves in education. The Institution of Gas Engineers appoints ten members of the advisory committee of the Livesey Professorship of Coal, Gas, and Fuel Industries at the University of Leeds, which it was instrumental in founding. In varying degrees they enter upon public activities. These activities are sometimes emphasized among the objects for which the association was founded. The Institution of Water Engineers has the two following clauses in its Memorandum of Association:

'To give facilities to and assist the Legislature, public bodies and others in conferring with and ascertaining the views of persons or bodies engaged or interested in water-works engineering and administration, and all related matters, and to confer with any person or any public or private institution or body in regard to such matters;

'To originate and promote improvements in the law, to support or oppose alterations therein, to originate or promote improvements in administration, and for the purposes aforesaid, to petition Parliament, promote or oppose Bills and take such other steps or proceedings as may be deemed expedient.'²

Ethical codes are widely adopted and are usually drawn up on the lines of those approved by the Institution of Civil Engineers. The following extract is from the Articles of Association of the Institution of Water Engineers. 'No person who in the opinion of the Council is actively engaged in or about the management or business, as principal, managing director, manager, agent or traveller, of or for any trading corporations, firm or concern doing business with water undertakings, shall be qualified to become a member in any class.'³

These bodies have all sought to embank themselves against the common herd by building up a graded or hierarchical system of membership and winning for members of each grade a prestige which will have money value. 'It has been the object of the Institution of Civil Engineers to establish the position of its

¹ Membership of these bodies is not in all cases confined to engineers. The Institution of Structural Engineers includes architects and surveyors.

² *Memorandum of Association of the Institution of Water Engineers*, clause 3 (5 and 6).

³ *Articles of Association of the Institution of Water Engineers*, clause 6.

members upon their possession of special professional knowledge.’¹ The activities of the Institution in relation to the economic problems of its members, who are engaged in industry, is limited to policy along these lines. But with regard to public services it has gone a little further, and though it has not drawn up a salary scale, it has attempted to ensure that those appointed to engineering posts shall have at least the qualifications which are demanded from associates of the Institution.² This, however, does not mean that the Institution is prepared to take much interest in matters of salary, and in consequence engineers tend either to look to other associations when they exist or to found protective associations of their own for help in this direction.

‘The Council are aware that in some services the matter of salary is being taken up by organisations formed for the purpose of improving the conditions of employment of salaried officials, and many members have invited the Council’s views as to the propriety of their joining such bodies. The Council would naturally prefer that the status and position of a civil engineer should make it unnecessary for him to join any union; but as things are they have to say that the Institution cannot take exception to its members acting in that way to protect their interests, provided the bodies to which they may attach themselves are composed of men of professional and administrative status similar to their own.’³

Engineers in the service of the central government and of local authorities are well provided for in the way of protective associations. For the former there is the Association of Professional Civil Servants, and for the latter the Institution of Municipal and County Engineers (founded 1893, membership about 3,500).⁴ The latter Institution is of interest, because it is not only an active protective association, but also conducts examinations which have great prestige with local authorities. It has drawn up elaborate *Model Regulations for the employment of Engineers and Surveyors by Local Government Authorities*, which include a scale of minimum salaries that it has attempted to enforce with considerable success.⁵ The Institution of Technical Engineers sets out to undertake protective functions for engineers employed in industry. It is registered as a trade union, but emphatically disclaims the intention

¹ From the report of the Council for 1920-1. *Minutes of Proceedings of the Institution of Civil Engineers*, vol. ccxii (1920-1), Part II, p. 305.

² *Ibid.*, vol. cxciv (1912-13), Part IV, p. 346.

³ *Ibid.*, vol. ccx (1919-20), Part II, p. 299.

⁴ Surveyors as well as engineers are eligible for membership of the Institution.

⁵ *Handbook of the Institution of Municipal and County Engineers* (1927-8), p. 231.

to associate itself with the Labour movement. It calls itself 'a negotiating and not a fighting machine'.¹

Three associations remain to be mentioned which do not fall into either of the two classes already mentioned. The Association of Consulting Engineers (incorporated 1913, membership about 100) is interesting because it is the only association confined to free-lance engineers. Membership is limited to those who are either corporate members of the Institution of Civil Engineers or full members of the Institutions of Electrical or Mechanical Engineers. They may have no connexion, direct or indirect, with any firm or business doing engineering work. The Society of Engineers (founded 1854, membership about 2,500) and the Junior Institution of Engineers (founded 1884, membership about 1,600) have study activities, and also aim at improving the status of their members and at finding employment for them.

The specialist association, interested in study, in education, and to some extent in status, dominates, and is likely to continue to dominate, the engineering world. Nevertheless dissatisfaction with the position has often been expressed of late years by those who believe that further protection is necessary. Discussion has centred round the legal regulation of the profession and the possibility of obtaining statutory privileges for trained and registered engineers. At one time this matter engaged the serious attention of the Institution of Civil Engineers. The report of the council of that body for 1919-20 refers to the steps taken during the year

'in the direction of forming a register of civil engineers. That such action is called for is abundantly evident. The public interest has for a long time demanded that there should be some ready means of recognizing the civil engineer who possesses both the art and the knowledge of applying it which together constitute him a member of that profession. An inquiry made of the whole Institution last July showed an overwhelming opinion that measures should be taken to establish a legal register and to restrict the title of 'Civil Engineer' to persons qualified to be placed on such a register. Preparations were made to obtain for this parliamentary authority, which it was ascertained would have to be the subject of a public bill.'²

A bill was drafted but it never went further because the council changed its opinion as to the wisdom of this policy. It found that there was no chance of reaching any unanimity between the

¹ *Society of Technical Engineers: Aims, Organization, and Policy* (1923), p. 7.

² *Minutes of Proceedings of the Institution of Civil Engineers*, vol. ccx (1919-20), Part II, p. 299.

more important associations regarding the provisions of such a bill. It also came to realize that no bill would meet with parliamentary approval which gave substantial privileges to the registered and did not at the same time put on the register all existing trained engineers, whether or not they were members of any association. The council therefore decided to petition for a supplementary charter, which they obtained in 1922. By-laws under the charter gave the title of 'Chartered Civil Engineer' to qualified members of the Institution. The Institution of Electrical Engineers had previously obtained a similar privilege for its members in 1921. This privilege is of limited value; it reserves no functions to any class of person. It does not protect an existing title but confers a new title. When the senior associations abandoned the policy of legal regulation, because it would admit to the register all trained engineers and would benefit the lower rather than the higher ranks, the junior associations took it up for precisely the same reasons. In 1926 the Society of Technical Engineers promoted a bill aiming at forming a register, protecting the title of engineer and prohibiting the unregistered from giving any valid certificate or from suing for fees. The bill contained some ingenious features. A General Council of Engineering, corresponding in certain features to the General Medical Council, was proposed. The existing professional institutions of standing were to be licensing bodies. It is certain, however, that Parliament will not even consider any such bill until the profession is united, and at present, therefore, legal registration is not a live issue.

CHEMISTS

IN 1667 Bishop Spratt classified chemists into 'such as look after knowledge of nature in general; such as seek out and prepare medicines; and such as search out riches by transmutation and the great elixir'.¹ The chemists of to-day are the descendants of the 'chemical philosophers'—the bishop's first class, and their fortunes are still linked in one matter with those of his second. This is not because of any lingering identity of function, but because of an identity of title. The 'chemists', from whom the apothecaries bought their mineral substances, became well known to the public—better known than the 'chemical philosophers'. We have seen that in 1841 the Pharmaceutical Society was founded to

¹ Quoted by R. B. Pilcher, *The Profession of Chemistry* (1914), p. 7.

protect the interests of chemists and druggists. The provisions of the Pharmacy Act of 1868 have already been quoted which reserve the title of chemist to persons registered under that Act. But no attempt has ever been made to enforce these provisions except against unregistered persons calling themselves chemists who keep open shop for the sale of poisons. The confusion thus caused has been a matter of discussion since the eighteenth century. Berkenhaut, writing in 1788, said that 'persons, who know nothing more of chemistry than the name, naturally suppose it to be a trade exercised by the store-keepers called druggists and chemists'.¹ For chemists it is more than a matter for discussion. It is a source of annoyance that the only title which they can employ is also used by the members of another vocation who possess an alternative title; it is even an impediment in the way of certain developments which, as we shall see, are sometimes advocated.²

The 'chemical philosophers' gave rise to the great students of pure chemistry—Boyle, Priestley, Cavendish, Dalton, and Davy. Until well on into the last century the only chemists were such men and their followers; chemistry was a pure science and had as little to do with industry as had comparative anatomy, which was being studied by its devotees at the same time. Before the middle of the last century, however, chemists began to apply their knowledge to industrial processes, and the possibility of a profession of chemistry arose. Application of chemical knowledge did not begin earlier, in part because chemists had not at many points advanced the study of the subject to a stage where application was possible, and in part because, where they had so advanced it, industry on its side had not evolved to a stage where it could use the knowledge available.

It is difficult to draw a line between pure and applied chemistry. The academic chemist is often engaged with problems of immediate practical importance, and the industrial chemist is often doing pure research. The former passes easily into industry, and the latter with no more difficulty into academic life. The education of the chemist is less vocational than that of any other professional man. When the application of chemistry to practical needs began, the chemist either remained in his laboratory or took it with him to the factory. The professional chemist is little occupied with administrative duties or with the manipulation of men. There has been some change in the position of the chemist in the great

¹ Quoted by R. B. Pilcher, *op. cit.*, p. 8.

² It appears that in no other language does this confusion exist. The title 'chemist' in its various forms is never used abroad by pharmacists who are called by variations of the terms apothecary or pharmacist.

industrial corporations of to-day, and he may now sometimes have managerial duties. But the wider world tends to share the opinion of the schoolboy that the chemist is preoccupied with 'stinks'. In the matter of its origin chemistry is strongly contrasted with engineering. The engineer began as a practical man who attempted to solve urgent problems relating to industry. It was only by slow steps that engineering became linked up with pure study, whereas chemistry began with pure study and still remains closely related to basic investigations.¹

Interest in pure chemistry was sufficiently widespread to lead to the formation of the Chemical Society in 1841, which year also witnessed the foundation of the Pharmaceutical Society.² The Chemical Society was founded as a study society and has always remained such. It has never demanded that its members should possess either scientific or practical accomplishments. There had been chairs of chemistry at Oxford and Cambridge since the early years of the nineteenth century. Chairs of chemistry were founded in 1828 at University College, and in 1831 at King's College. In 1845 the Royal College of Chemistry was opened and later became a part of the Royal School of Mines; Owens College, Manchester, had a chair of chemistry from its foundation in 1849. Thus about the middle of the last century the facilities for studying chemistry were being rapidly increased and at the same time chemists were beginning to find employment in industry. Professors of chemistry had been called upon to give advice and assistance to manufacturers since the early years of the century, but it was not until the 'sixties that a movement arose to organize professional chemists.

In 1867 some Fellows of the Chemical Society proposed that would-be members should be required to show that they were competent chemists.³ They argued, in fact, that the Society should take the first step in the direction of becoming a professional association. This proposal was much canvassed in the following years, but nothing came of it. The matter was brought to a head in 1875 by the passage of the Sale of Food and Drugs Act. Public analysts were appointed under the Act, whose duty it was to apply

¹ James Watt was the first great engineer to approach his profession from the side of pure study. 'Watt, alone of the great English inventors, worked from the standpoint of theoretical, not merely of applied science.' E. Halévy, *History of the English People in 1815* (1924), p. 472.

² There has been a chemical section of the British Association for the Advancement of Science since its foundation in 1831.

³ For an account of these times see *The History of the Institute of Chemistry, 1877-1914* (1914). This useful work is one of the few examples of the history of a professional association compiled by the association.

analytical chemistry for the public benefit. But it soon became apparent that the analysts were often incompetent. There was need also, as was obvious from evidence given in court, for a higher standard of honourable conduct. 'Certain reprehensible practices were quite common, and among the less flagrant of these the issuing of highly laudatory reports for unrestricted publication and touting or advertising for practice were very frequently met with.'¹ A final effort was made to induce the Chemical Society to interest itself in the education and discipline of chemists. It failed when it was discovered that under its charter the Society could not enlarge its functions, and that there was not that unanimity among the members which alone would have enabled the Society successfully to appeal for a supplementary charter.

The decision was therefore taken to found a new association, and in 1878 application was made to the Board of Trade to incorporate the Institute of Professional Chemists. Application was refused on the grounds that pharmacists and others might claim to be professional chemists. So firm a hold had pharmacists obtained over the title chemist that only after a long wrangle was permission obtained to incorporate the Society under the title of the Institute of Chemistry. In the draft articles of association the first object of the Institute was stated to be 'to ensure that consulting and analytical chemists are duly qualified for the proper discharge of the duties they undertake'. This was struck out by the Board of Trade on the grounds that it 'appeared to point to the granting of certificates' and that this might be held to invade the province of the Pharmaceutical Society.² Alternative words had to be found. The Institute was given power to hold examinations, which were first held in 1879. In 1882 candidates were also required to have passed through an approved course of training. The object of this latter provision was to make an end of the system of pupillage.

The position was unsatisfactory, and a petition for a charter was presented which laid stress upon the need for 'certificates of competency granted by a scientific body possessing sufficient status'.³ It was urged that incorporation 'would be a public recognition of the Profession of Analytical and Consulting Chemistry, and would tend gradually to raise its character and thus secure for the community the existence of a class of persons well qualified to be employed in the responsible and difficult duties, often

¹ A. Chaston Chapman, *The Growth of the Profession of Chemistry* (1917), p. 7.

² *The History of the Institute of Chemistry, 1877-1914* (1914), p. 41.

³ *Ibid.*, p. 80.

devolving upon them'.¹ The charter was granted in 1884. Power was given to issue certificates and to exercise discipline over members. For the latter purpose four Censors are elected annually, who, should they think proper, report members to the council, which may exclude or suspend offenders. Members are divided into fellows and associates, who have the exclusive right to use the letters F.I.C. and A.I.C. respectively. The growth in membership has been remarkable. It did not exceed 500 until 1887, and is now nearly 6,000. In 1926, when there were about 5,000 members, it was estimated that there were some 10,000 persons earning a livelihood by the practice of chemistry.² Of those who were not members, about 2,000 were teachers of chemistry. It seems probable that the majority of non-members were only partly trained, and that therefore well over a half and perhaps three-quarters of all fully trained chemists were members.

Professor Odling attributed the founding of the Institute to 'a long pent-up feeling of dissatisfaction at the deficiency of means for exerting a common action and influence'³ among the younger practitioners. It seems that this dissatisfaction has not been entirely dispelled. There exists among chemists a restlessness and a *malaise* that is not visible among engineers. It is not uncommon for chemists to cast the blame upon those responsible for the policy of the Institute; but to an observer from outside it is evident that many causes contribute to the present state of affairs. It must be remembered that the Institute has no study function; it holds no meetings for the discussion of papers and publishes no scientific journal, and members are apt in consequence to ask what they get for their money. They tend to put this question with insistence because the powers of the Institute to press for higher remuneration are limited. After the case of *Jenkin v. The Pharmaceutical Society*⁴ the following note appeared in the periodical published by the Institute. 'The view of the Council of the Institute, that the Institute, consisting as it does of employers and employees, could not adopt the functions of a trade union, appears to have ample support in the arguments and judgements of this case.'⁵ That is to say that the Institute can attract and hold members neither by study facilities nor by trade-union activities, but only by the prestige which may appertain to the letters A.I.C. and F.I.C.

¹ Ibid., p. 80.

² Of this number not more than 350 were said to be in private practice.

A. Chaston Chapman, op. cit., p. 17.

³ *Institute of Chemistry: Jubilee Celebrations* (1928), p. 48.

⁴ See p. 39.

⁵ *Journal and Proceedings of the Institute of Chemistry*, (1920), Part VI, p. 326.

The Institute, however, has been active in the matter of remuneration so far as its constitution permits. 'It is impossible to ignore the fact that the status of the professional man must be dependent upon the salary or fees which he receives', says a leading article in the *Journal of the Institute*. 'Therefore, as the Institute hopes to raise and maintain the status of the chemist, it must take the economic aspect into consideration on certain broad general lines.'¹ Interpreting its functions in this fashion, it has conducted four inquiries in recent years into the remuneration of its members, and it keeps an employment register. Ever since its foundation it has pressed upon public authorities the necessity for holders of certain posts being fully qualified, and nowadays 'in practically all public chemical appointments due consideration is given to the qualifications F.I.C. and A.I.C., which are in some cases indispensable'.² The first efforts were in relation to appointments as public analysts, and in that sphere its success has been marked. The Institute works in conjunction with the Society of Public Analysts founded in 1875.³ At the present time 96 per cent. of the members of the Society are also members of the Institute, and the Society may almost be regarded as a special section of the Institute engaged in forwarding the interests of those chemists who have adopted the profession of analyst. But in regard to posts in industrial concerns there has been no direct negotiation. By calling attention to the need for competency and by keeping an appointments register, which is increasingly used by employers, the Institute has gone some way towards securing the better posts for its members.

The prestige and consequent value of membership, though considerable, have never become such that all qualified to obtain it do in fact apply for it. Academic chemists do not feel the need for the distinctions which the Institute can confer, and are frequently temperamentally adverse to the activities of professional societies. For them the Chemical Society is enough and for many of their pupils also; the latter can and do get the better posts without becoming members of the Institute. It is by no means the case that teachers of chemistry have always held aloof; no less than ten out of the sixteen original subscribers to the Institute were teachers, and the holder of the Oxford chair of chemistry was

¹ *Journal and Proceedings of the Institute of Chemistry* (1919), Part II, p. 50.

² *Institute of Chemistry: Jubilee Celebrations* (1928), p. 51.

³ In 1920, for instance, the Institute and the Society jointly remonstrated with the Brighton Corporation concerning the salary offered to a public analyst and warned those who might contemplate applying for the post not to do so. *Journal and Proceedings of the Institute of Chemistry* (1921), Part I, p. 39.

president from 1883 and 1888. But a proportion of eminent chemists and their pupils have felt able to dispense with the Institute and pass it by, with the result that the position of the Institute is none too strong in respect of that one function, namely the hall-marking of competency, which is its special role.

Nevertheless, taking the position, including the powers and constitution of the Institute as they are, a good case can be made out for holding that it has done as much as could be expected. The first care of the Institute has always been to maintain high qualifications for membership. The fellowship is now, except under very special circumstances, confined to associates who have either passed a qualifying examination or published important research. Formerly associateship was open only to those who had undergone an approved course of training and had passed the examinations of the Institute. But it was found that honours graduates, who on the strength of their degrees could get satisfactory posts, were unwilling to sit for a further examination, and that this important section of trained chemists was remaining outside the Institute. In 1918 first and second class honours graduates were admitted without examination; but even under these circumstances the associateship has not proved very attractive to this section. In 1926 a further important change was made. Before that date it was difficult for any one to obtain the associateship who had not gone through a 'normal course of training'.¹ New regulations rendered it possible for a man who has learnt his chemistry at evening classes to sit for the associateship examination. A candidate who is over thirty years of age may be admitted to a special examination, the nature of which is determined by the council, provided that he can give sufficient evidence of training and experience. This latter move seems to be as far as the Institute can go to meet the difficulty that 'manufacturers and employers have been . . . too apt to engage young untrained or only partly trained assistants. In the course of time many such assistants have been promoted without regard to their fitness for higher positions, and the process being repeated, staffs of men of similar calibre have arisen in many quite important industrial concerns'.² It would thus appear that, while standards have been preserved, every effort has been made to meet the special cases of the university graduate on the one hand and of the zealous and self-educated laboratory assistant on the other hand.

To these sources of dissatisfaction may be added two which

¹ Ibid. (1927), Part II, p. 88.

² Ibid. (1920), Part III, p. 151.

are beyond the power of the Institute to remedy. There is the trouble about the title 'chemist'. The Institute has constantly had the matter under consideration; at a conference with the Pharmaceutical Society in 1917 it was pointed out by the latter that the public would continue to call a pharmacist a chemist whatever action was taken. It was also stated that it might cost the pharmacists anything up to £250,000 to eliminate the word chemist from their shop signs, labels, and addresses. The pharmacists are clearly not disposed to move, and the Institute would hardly be well advised to toy with any alternatives such as 'chemician'. The Pharmacy and Poisons Bill, to which reference has already been made, proposes to limit the prohibition to take the title of chemist to those who conduct a retail pharmacist's business without being registered; but this is merely to recognize the existing practice. The Institute is considering an application for a supplementary charter which would give its members the exclusive right to the title of 'chartered chemist'. But this, it is said, would be a virtual surrender of the claim to the title of chemist. A more real source of dissatisfaction is the position of the chemist in industry.¹ The accountant is becoming recognized as a valuable member of a board of directors, and an engineer often rises to managerial positions, but the chemist less often obtains such posts. There are signs, however, that the situation is undergoing a change with the growth of large corporations.

Reference has been made to the need for better standards of conduct at the time when the Institute was founded. As late as 1893 the Censors reported that unprofessional practices were 'unduly prevalent'. Since that time a great improvement has been brought about. It was not, however, until 1920 that a by-law was framed which specified four actions amounting to unprofessional conduct, soliciting for practice, unfair competition, supplying reports to unqualified persons with the knowledge that they will be used as their own work, and issuing reports for publication containing objectionable statements.² It is stated in the by-law that this list is not intended to be exhaustive. It is of some interest to note that the Institute has not only raised no objections to the publication of articles in the press, but has encouraged

¹ See a leading article in the *Journal of the Society of Chemical Industry* (1925), p. 1057.

² That the chemist may be tempted into unprofessional conduct is evident from the following quotation which is taken from the *Journal of the Society of Chemical Industry* (1928), p. 2. 'Members of this Society have only to make friends with the advertisers and the advertisers are quite ready to be equally friendly on their side. . . . Help us to sell our tartaric acid, says the — Company, and we will pay a portion of our profits to help you publish what you desire.'

members to attempt to educate the public concerning the importance of chemistry by that means.

The Institute has found itself taking part in what may be called chemical politics especially in recent years. On the one hand the Institute has on several occasions approached the Government concerning measures where chemical considerations are involved. Thus in 1921, when a new food bill was proposed, the Institute, in conjunction with the Society of Public Analysts, 'notified the Ministry of Health that they are anxious to afford the Government every assistance in their power when such a measure is in contemplation. A Joint Committee of the Institute and of the Society is, in fact, taking steps to collect from public analysts useful information bearing on such legislation.'¹ On the other hand the Institute is more and more often consulted by government departments. It is 'frequently called upon to aid the Government, not only by providing competent chemists for the public service, but by affording advice and assistance in matters of legislation upon which chemistry has a bearing'.² The President referred in 1923 to 'the increased number of occasions on which we have been appealed to by Government Departments for help of various kinds, and to the greater weight which those Departments attach to our counsels or to our representations'.³ A system is in operation for the granting of national certificates in chemistry, worked by the Institute and the Board of Education, on lines similar to those by which national certificates in mechanical and electrical engineering are awarded.

In spite of these achievements, the restlessness, to which reference has been made, led to the formation in 1917 of the British Association of Chemists, which is registered as a trade union.⁴ Membership is open to those with 'a sufficient general education and scientific training' who have had at least seven years' practice in pure or applied chemistry;⁵ about a quarter of its members, who number just now over 1,000, are also members of the Institute. One of the objects of the Association is the regulation 'of relations between employers and chemists', a function which by its constitution the Institute cannot perform.⁶ Another object is to restrict the practice of chemistry to properly qualified chemists, which involves getting 'the term "chemist" legally

¹ *Journal and Proceedings of the Institute of Chemistry* (1921), Part III, p. 172.

² *Institute of Chemistry: Jubilee Celebrations* (1928), p. 51.

³ *Journal and Proceedings of the Institute of Chemistry* (1923), Part II, p. 91.

⁴ In 1881 the Society of Chemical Industry was founded. It is a study association, but its journal makes reference at times to professional problems.

⁵ *Rules of the British Association of Chemists*, III, 2 b.

⁶ *Ibid.*, II, 1 a.

re-defined'.¹ It is proposed to establish a General Chemical Council, which shall not be an examining body, with powers to register those who by its standards are qualified chemists. These registered chemists would have the exclusive right to the title 'registered chemical practitioner', and unregistered persons would be 'restricted from assuming responsibility for the manufacture of chemicals considered to constitute a source of danger either to the work people engaged in such manufacture or to the general public'.² Since the title suggested is not likely to be of much value, the success of the scheme obviously depends upon the exclusive right to undertake important functions, and it has not yet been shown what functions could be so reserved. From the nature of the chemist's work it is not possible, as is the case in medicine and might be the case in engineering and architecture, to restrict the right to grant valid certificates. The restriction must refer to a chemical and not to a clerical operation. The matter has also been before the Institute on more than one occasion. Its members are divided in their views. A committee, appointed in 1926, reported that it was not a practical proposition at the present time, and this seems to be now the dominant opinion.

At first sight it is somewhat surprising that qualified chemists should not have established a virtual monopoly of practice through purely voluntary organization as in the case of, let us say, actuaries. There are favourable features in the situation. There have not appeared in chemistry, as in engineering, specialized functions round which separate organizations tend to develop;³ the qualified chemists are also relatively easily distinguished from the unqualified. Proficiency in chemistry is more a matter of formal training than proficiency in engineering and in many other professions. The explanation is largely to be sought in the fact that the professional organization is not a study association, which weakens its capacity for attracting and holding members. This defect in its constitution is all the more serious because of the importance of the academic chemist in the world of chemistry. There are no academic actuaries. But the professors of chemistry are

¹ *Rules of the British Association of Chemists*, II, 1 e.

² *The Chemical Practitioner*, vol. ii, no. 10 (1929), p. 6.

³ Specialization is developing, but not until training is over. This may indicate a need for specialist study societies, but not for a multiplication of professional associations. While a similar formal training is necessary for all, it is sometimes suggested that there is room in industry for men who have taken a shortened course. If such a class should arise, it would cease to be so easy to distinguish between the qualified and the unqualified. See 'The Organization and Registration of Chemists', *Nature*, vol. cxix (1927), p. 913, and the *Journal of the Society of Chemical Industry* (1926), p. 87.

prominent in the chemical world, and for them the main attraction of a professional association is its study interest. Thus they tend to be lukewarm about the Institute. Had the Chemical Society enlarged its functions and become a professional association, the situation in the chemical world would have been very different to-day.

PHYSICISTS

'Up to the time of the foundation of the Institute of Physics, the physicist had hardly been recognized as a member of one of the professions.'¹ Until recently the physicist was confined to the universities, and the application of physical knowledge fell within the province of the engineer. But increasingly of late years a demand has come for physicists in industry, and this change in the situation led to the foundation of the Institute of Physics in 1920. 'The need had long been felt for a corporate body analogous to the Institute of Chemistry which could represent the profession of physics, and strengthen the position of workers engaged therein, and which would also form a bond between the various societies interested in physics and its applications.'²

The constitution of the Institute of Physics differs in some important respects from that of the Institute of Chemistry. Members of any of five 'participating societies' can become ordinary members of the Institute of Physics. These participating societies, such as the Physical Society of London, are study associations, and they cover all the special study interests that are within the province of the physicist. But the corporate members of the Institute, consisting of fellows and associates, in whom alone authority is vested, must have passed either the examination of the Institute or an equivalent examination. As in the case of the Institute of Chemistry, first or second class honours in a degree examination at a university are regarded as an equivalent. Fellows have to show a record of five years' experience in addition to these academic qualifications; there are between 600 and 700 corporate members. The Institute arranges lectures and produces the monthly *Journal of Scientific Instruments* with the co-operation of the National Physical Laboratory. It does not hold study meetings.

The objects and policy of the Institute of Physics are much the

¹ *The Institute of Physics: Objects of the Institute* (1930), p. 5.

² *Ibid.*, p. 5.

same as those of the Institute of Chemistry. The chief object is to secure 'the recognition of the professional status of the physicist'.¹ The method is to issue certificates of competency and to win such prestige for those who hold them as to secure a virtual monopoly of the better appointments. An appointment register is maintained and advice given about salaries in individual cases. The newer Institute would appear to command its situation more effectively than the older. This is partly due to a shortage of qualified physicists. It is also due to a better constitution. This has been so framed that the study associations have been drawn within its scope. The Institute does not compete with them by offering similar facilities, but it co-ordinates their activities. A member of the Institute, who is a member of one of the participating societies, can, for example, obtain the publications of the other societies at reduced prices. These inducements are sufficient to draw nearly all physicists within the Institute, even though they may not need the protection which it offers or the prestige which it confers. The young physicist with an honours degree, for instance, will certainly join a study society and will then find it useful to join the Institute, whereas the young chemist in a corresponding position may find no reason for joining the Institute of Chemistry.

ARCHITECTS

It is not an accident that the first English architect whose name has become generally familiar is the man who more than any other was responsible for giving English Renaissance architecture its specifically Palladian character. The design of a Palladian house demanded the strictest adherence to certain rules and proportions which could not be studied except in Italy or through the medium of printed books of plans and elevations; while for its execution there was required a single directing mind, since any departure from the plan in detail would vitiate the whole. The practice of studying the Palladian models at the source and of designing in accordance with Palladian rules was initiated by Inigo Jones (1573-1651); and he may therefore be regarded as the first English representative of a profession whose technique is based upon study, and whose function is supervisory rather than executive.²

¹ *The Institute of Physics: Objects of the Institute* (1930), p. 6.

² How far mediæval England knew the 'architect' as one who plans and supervises is apparently a debated question. It is clear that as long as 'style'

Of the architects of the seventeenth and eighteenth centuries, some were the dependants of noble families, while others were scarcely distinguishable from builders and contractors.¹ Largely for this reason association was retarded. Its eventual appearance was due in part to the revolution in public taste which, beginning in the eighteenth century, culminated in the Gothic Revival, and in part to the growing commercialization of building and the invention of new materials of a proprietary and patentable kind which made it desirable to complete the severance of the architect from building interests.² Between 1791 and 1834 four distinct societies came into being. The first of these, the Architects' Club, founded in 1791, was an extremely select body, to which no architect was admitted unless he was an Academician of London, Paris, Rome, Parma, Bologna, or Florence. Chambers, Holland, James Wyatt, and Samuel Pepys Cockerell were among its members; and under the influence of Soane, to whom, more than any other man, the divorce of the architect from commercial entanglements is due, the Club set its face against improper relations between architect and builder, and adopted Soane's own definition of the architect.

'The business of the architect is to make the designs and estimates, to direct the works, and to measure and value the different parts,³ he is the intermediary agent between the employer, whose honour and interests he is to study, and the mechanic whose rights he is to defend

remained traditional there was less need for planning and supervision; while it is in fact seldom easy to identify the 'architect' even of famous buildings erected before the time of Inigo Jones.

¹ Thus Carr of York (1723-1807), architect of Basildon Park, 'began as a working mason', and the Hiorn brothers of Warwick (1715-76 and c. 1716-70) 'seem to have been builders as much as architects' (H. Avray Tipping, *English Homes—Period VI*, vol. i (1926), pp. xv and xviii); while Dance the elder (1700-68), architect of the Mansion House, 'was a master carpenter, or shipwright' (Arthur T. Bolton, *Life and Work a Century Ago: an outline of the career of Sir John Soane*, Soane Museum Publications, No. 11 (1923), p. 2).

² Thus Holland (c. 1746-1806) is reported to have been commercially interested in the white brick which he employed at Althorp and Claremont; while the Adam brothers were the proprietors of a patent cement (Arthur T. Bolton, *Architecture of Robert and James Adam* (1922), vol. i, p. 10). Holland is also believed to have been a member of a firm of timber merchants (*D.N.B.*); while we are told of Sir Jeffry Wyattville (1766-1840) that he 'was taken into profitable partnership by John Armstrong, a large builder, of Pimlico' (*ibid.*).

³ That is, to estimate the 'quantities' of the various materials required. It is upon the basis of these quantities that the contractor works out the figure at which he is prepared to tender. At the present day the quantities are frequently 'taken out' by a specialist known as a 'quantity surveyor'. The quantity surveyors belong for the most part to the Chartered Surveyors' Institution. Sometimes the architect does not even 'direct the works', but leaves this to a 'building surveyor'. Those who specialize as building surveyors also belong for the most part to the Chartered Surveyors' Institution; see below, p. 195.

His situation implies great trust; he is responsible for the mistakes, negligencies and ignorancies of those he employs, and, above all, he is to take care that the workmen's bills do not exceed his own estimate. If these are the duties of an architect, with what propriety can his situation and that of the builder or contractor be united?'¹

The London Architectural Society, founded in 1806, and the Architectural Society, founded in 1831, were primarily study associations which aimed at familiarizing their members, through the medium of lectures, papers, and discussion, with the wide range of 'styles' in which they were expected by their clients to be competent to design. In 1834, however, a fourth society was formed on altogether more ambitious lines. This was the Institute of British Architects, which, having already received a charter in 1837, in 1866 became by Royal Command the Royal Institute of British Architects, and is now generally known as the 'R.I.B.A.' The Institute was founded 'for facilitating the acquirement of architectural knowledge, for the promotion of the different branches of science connected with it, and for establishing an uniformity and respectability of practice in the profession'.² Architects belonging to the Institute were to be distinguished as fellows, 'who have been engaged as Principals for at least seven successive years in the practice of Civil Architecture';³ and associates, namely 'persons engaged in the study of Civil Architecture, or in practice less than seven years'.⁴ Soane's conception of the architect as the 'intermediary' between employer and contractor was embodied in rules which laid it down that the following, *inter alia*, were to be 'deemed grounds for the expulsion of any Fellow or Associate': 'the receipt or acceptance of any pecuniary consideration or emolument from any builder or other tradesman'; 'having any interest in, or participation with, any trade, contract, or materials supplied at any works the execution whereof he may be or have been engaged to superintend'; and finally 'any conduct which, in the opinion of the Council, shall be derogatory to his professional character'.⁵ It was also stated that: 'It will be the leading purpose of the Institute to offer every inducement to the junior class of members, by making such ample provision for general information and improvement as can be effected by the funds, which the Council may have under their control.'⁶

¹ Arthur T. Bolton, *Life and Work a Century Ago: an outline of the career of Sir John Soane*, Soane Museum Publications, No. 11 (1923), p. 5.

² Institute of British Architects: *Address and Regulations* (1835), p. 20.

³ *Ibid.*, p. 20.

⁴ *Ibid.*, pp. 20 and 21.

⁵ *Ibid.*, pp. 24 and 25.

⁶ *Ibid.*, pp. 48 and 49.

From comparatively small beginnings the Institute has come to dominate the architectural profession; but this position has only been achieved slowly and with difficulty, and for a large part of its history the Institute has been troubled with the rivalry of competing associations. One by one, however, these rival bodies have been brought by the R.I.B.A. within its own organization, either by direct absorption or through a system of federal alliances; while their policies have to a greater or less extent been adopted as its own. Of the earlier associations the Architects' Club was certainly defunct, and the London Architectural Society also had probably become extinct, before the Institute was founded. The Architectural Society was absorbed in 1842. But other bodies continued to spring up. In 1847 the Architectural Association was formed by a group of the younger men, who had no voice in the affairs of the Institute, where the Fellows alone had voting rights, and who felt that it was not making that 'ample provision for general information and improvement' which was among its declared objects. In its early years the Association was regarded with somewhat jealous feelings in the Institute; but it was successful in arousing greater interest in professional education, and in course of time a *modus vivendi* was established, whereby the Association ceased to be a rival and not always friendly professional body, and became what it now is, a club for architects and a school for architectural students. Another rival, the Architectural Alliance, was founded in or about 1862. It aimed at securing better control over the competition system, and at the adoption of a 'uniform' scale of charges 'throughout the kingdom'.¹ Eventually it was absorbed in the Institute. During the 'fifties and 'sixties provincial societies of architects began to be formed in different parts of the country to represent local interests, and their number has gone on increasing, until to-day they extend to every part of the Empire. From the start their relations with the Institute have been amicable. During the 'seventies and 'eighties amalgamation was discussed; but in place of amalgamation a system of federal alliances has been brought into being which gives the 'allied societies' representation on the council of the R.I.B.A., while they in return acknowledge the suzerainty of the senior body, which delimits areas, has power to veto constitutional amendments, and is able to make its influence felt in decisions of policy.²

¹ R.I.B.A.: *General Conference of Architects, 1871. Report of Proceedings*, p. 1.

² The influence on policy is reciprocal. It is the view of the R.I.B.A. that when an architect takes out his own quantities he should always be paid by the client and never by the contractor; and when it was first proposed to draw up

Among the founders of the Architectural Association there had been some who had hoped for the institution of examinations for students, accompanied by a diploma to be granted to successful candidates; while some members of the profession went further and openly advocated state registration, on the ground that it was 'essential' . . . for this profession of ours, like those of medicine and law, to possess its diploma, or licence to practise'.¹ These suggestions, though they received some support among members of the Institute, were met generally with hostility. A section of the profession, deeply influenced by the cultural movement associated with Ruskin and Morris, took the view that 'Art cannot be taught'. Consequently, though the examination principle was eventually conceded even in the Institute, the process was very slow. In 1863 the Institute inaugurated a purely voluntary examination, unaccompanied by any diploma or other means of advertisement for successful candidates. In 1869 they were accorded recognition 'of a reluctant and grudging character',² in the shape of a certificate; but a suggestion that admission to the fellowship should be by examination only was repudiated in the most emphatic terms.³ However, eight years later (in 1877), a by-law was agreed to which laid down that 'all gentlemen engaged in the study or practice of civil architecture, before presenting themselves for election as Associates, shall, after May 1882, be required to pass an examination';⁴ and in 1887 a new charter was procured embodying this by-law in the constitution.⁵ The fellowship remained open on the original terms to any architect of seven years' standing.

But this was not enough for the registrationists, and in 1884 they seceded to form the rival Society of Architects. Forty years were to elapse before this breach was healed. During the 'eighties and 'nineties the Society was untiring in its efforts to secure registration, and bills for this object were introduced into Parliament every few years; but the opposition of the Institute sufficed a code of professional practice, it was the intention to make it clear that an architect was absolutely forbidden to receive payment for quantities from the contractor. However, representations were made to the council that this practice had long prevailed in certain districts; and, though the allied societies are not actually bound by the R.I.B.A. code, it was decided, in deference to the wishes of certain among them, to amend the draft. Consequently the code as it now reads merely lays it down that it is 'desirable' for the architect to be paid for quantities by the client rather than the contractor. See R.I.B.A.: *Journal*, 3rd ser., vol. xxvii (1919-20), p. 424; and *Kalendar* (1931-2), p. 108.

¹ See R.I.B.A.: *Sessional Papers*, 1869-70, pp. 209 and 210.

² See *ibid.*, p. 211.

³ See *ibid.*, p. 5.

⁴ See R.I.B.A.: *Transactions*, 1879-80, p. 10.

⁵ The 1887 charter conferred on fellows and associates the right to use the initials 'F.R.I.B.A.' and 'A.R.I.B.A.' respectively. A subsequent charter in 1909 gave them the right to describe themselves as 'Chartered Architects'.

to prevent any of them reaching the statute book. After the turn of the century, however, there came a change in its attitude. Wide support for the Society's policy was disclosed among the provincial associations allied to the R.I.B.A. The Institute was led to enter the lists in support of registration, and the year 1906 saw the simultaneous promotion of two rival bills. It then became clear that no association which was not representative of the whole profession could hope to get a bill through; and in 1909 with the idea of gaining new members and thus increasing its authority and representative character, the R.I.B.A. took the unusual step of opening its 'back door'. By a supplemental charter of that year a new class of licentiates was created, open temporarily to any architect of a certain number of years' standing.¹ A considerable increase in membership resulted; but the breach between the rival associations was not healed. After some hesitation, therefore, it was determined to open up negotiations for the complete merger of the Society in the Institute. By 1911 a scheme for amalgamation had been agreed upon; and this was to be followed by the promotion of a bill to set up a state register. However, at the last minute legal difficulties appeared, inasmuch as the Institute were advised that they had no power under their charters to amalgamate with any other body. After some discussion it was decided to proceed at once with a petition for a new charter; but before this could be done the council elections placed a new party in office, determined to oppose both unification and registration; shortly afterwards war broke out.

When the War came to an end there was a revival of controversy. The policy of registration came, indeed, to be accepted in principle by all parties; but amalgamation with the Society was opposed by many on the ground that it would involve dilution of the associate class in the Institute. For the Society, despite its keen advocacy of registration, had not begun to hold a qualifying examination for its own entrants until 1897, and had never demanded so high a standard as the Institute. It was feared, therefore, that it would 'lower the prestige of the Institute' and be 'a grave injustice . . . to the Associates' to admit members of the Society to equality with the A.R.I.B.A.² In 1920 the Institute appointed a committee, representative of the entire profession, including 'un-attached architects', to inquire and report. Of the two alternatives

¹ In the same charter, however, the fellowship was finally closed to all who had not taken the examination, subject to a right of the council to dispense with the examination in special circumstances. Knott, the architect of the London County Hall, became an F.R.I.B.A. under this dispensation clause in 1921.

² R.I.B.A.: *Journal*, 3rd ser., vol. xxxi (1923-4), p. 546.

considered, namely, unification to be followed by registration, and registration under a federal registration council, the committee recommended the former, as legal advice had indicated that its parliamentary chances were greatly superior. Accordingly negotiations were opened up and proposals for amalgamation to be followed by registration were laid before the members of both Institute and Society. But a section of the profession continued to oppose this scheme on the ground that Parliament might not grant the desired register, in which case the ranks of the Institute would have been diluted for nothing. Towards the end of 1921 they formed the R.I.B.A. Constitution League, 'to oppose the admittance, before the passing of a Registration Act, of new members to the R.I.B.A., except in accordance with the present system of examination'.¹

In the following year they secured a complete reversal of policy on the part of the Institute. At the elections in 1922 the entire Institute council was turned out and replaced by a new council pledged to a conservative policy. All idea of unification was dropped, and a new bill prepared. The new bill, however, met with little or no support outside the Institute and was by no means acceptable to all parties within it. Lord Crawford, who was to sponsor the measure in the Lords, hinted that it would be very unwise to introduce a bill for which so little support was forthcoming even in the ranks of the profession itself; and in the event the party of unification were returned to power once more in 1923, and immediately set to work to prepare a new scheme of amalgamation, this time with safeguards for the A.R.I.B.A. class. Under this scheme the senior class of members of the Society were to be admitted direct to the fellowship of the Institute, while the junior class were to be admitted as licentiates, though any who elected to do so were to be entitled to sit for a special examination covering so many of the subjects set for the A.R.I.B.A. as had found no place in the Society's syllabus, and if successful to be admitted to the associateship. 'If returned to office', the council announced,² referring to the elections of 1924, they would at once submit the scheme for confirmation by the general body. They were in fact returned (by the votes of the fellows alone), and the scheme was approved at a meeting of the general body (fellows and associates); but though a special appeal had been made, less than 20 per cent. of those who were entitled to vote were present. The opposition therefore pressed for a post-card referendum, threatening, if

¹ See R.I.B.A.: *Journal*, 3rd ser., vol. xxix (1921-2), p. 60.

² Ibid., vol. xxxi (1923-4), p. 393.

one were not held, to leave the Institute and form a rival society. Their demand was conceded; a referendum was held, and resulted in a six to one majority in favour of the council's scheme. This verdict was accepted by the dissentients; shortly afterwards a new charter was procured, and the final stages of amalgamation were completed in June 1925.

Under the terms of the amalgamation agreement it was stipulated that 'when and so soon as this Agreement shall have become absolute the Royal Institute shall forthwith Promote and use its utmost endeavours to carry through a Registration Bill until it becomes an Act of Parliament'.¹ Accordingly a series of bills were promoted between 1927 and 1931. Much opposition was encountered, coming, in part from associations hurriedly called into existence to represent architects not attached directly or indirectly to the R.I.B.A.,² in part from kindred professions such as the engineers, and in part from representatives of the 'consumers', notably the local authorities and the co-operative movement. As a result success was achieved in 1931 only at the cost of extensive concessions which will make registration largely futile, while at the same time jeopardizing the ascendancy of the Institute which the labours of close upon a century had only recently made secure. The provisions of the Architects Registration Act are complicated, and it cannot yet be predicted exactly how they will work out in practice. Briefly the Act provides for a register of persons whose only privilege will be the right to describe themselves as 'registered architects'. The administrative machinery set up by the Act is extremely cumbersome.³ The register will be kept by the Architects' Registration Council, which will be composed preponderantly of architects, but upon which the R.I.B.A. will only be represented in proportion to the number of its architect members, while similar representation will be enjoyed by the two new bodies referred to above and also by a body which is mainly an organization of salaried employees.⁴ Moreover the Council will have little control over the qualifications for admission, inasmuch as it has no option but to recognize examinations held by the Board of Architectural Education, or

¹ See R.I.B.A.: *Kalendar*, 1931-2, p. 104.

² Of the two new associations here referred to, the Incorporated Association of Architects and Surveyors and the Faculty of Architects and Surveyors, the former owes its origin to registration proposals put forward by surveyors and others in 1923 (see below, p. 207); the latter, on the other hand, arose in direct response to the registration movement among architects.

³ A more detailed account of the provisions of this Act will be found in Appendix II.

⁴ The Association of Architects, Surveyors, and Technical Assistants.

recommended by it for recognition. The Board is an unwieldy and heterogeneous body of no less than seventy-five members, upon which the representatives of architecture (including the architectural schools) can hope for little more than a bare majority, and upon which practising architects will be represented to the extent of less than one-third, and that only indirectly through a right of nomination conferred upon the Architects' Registration Council. Removal from the register for professional misconduct comes within the province of a third body, the Discipline Committee, which will normally be composed of four architects, nominated by the Council, and four laymen.

The most sanguine advocates of registration can hardly feel that this is the measure upon which so many hopes were pinned. Indeed, it may be hazarded that if more thought had been given to the ends in view and less to the means, and above all if there had been a better comprehension of the inevitable limitations of such powers as even the greatest political good fortune could have given them, there would have been great hesitation in approaching Parliament at all. As it was professional politics were too embittered, and professional policy too much at the mercy of contending factions, for carefully thought out action to be possible. How is this to be explained? It will perhaps help towards an understanding of the history of the profession and of the unsatisfactory conclusion to which it has led up, if we pause to consider the nature of the architect's technique. Architecture differs from every other profession included in this study in that the technique contains an aesthetic element. Indeed, the aesthetic element is fundamental; and no matter how complex the science of building construction is or may become, the architect is only concerned with that science in order to apply it to aesthetic purposes. The architect therefore is not only a professional man but also an artist, and he shares in some measure both the problems and the qualities of temperament commonly associated with artists. Thus he lives in a world which is dominated by fashion and split up into cliques and coteries, and he brings to the consideration of professional business something of the outlook which characterizes his interest in the subject-matter of his art. As a result faction has become the distinctive feature of architectural politics. The R.I.B.A. is a very active and energetic body, with much valuable work to its credit.¹ But it is agitated and restless, and in architecture, alone among the

¹ How numerous its activities are may be gauged from the fact that during the session 1930-1 alone the council appointed representatives on twenty-eight official, semi-official, and other bodies. R.I.B.A.: *Journal*, 3rd ser., vol. xxxviii (1930-1), pp. 385 and 386.

professions, the public has become accustomed to the spectacle of the most eminent practitioners resigning from membership of the principal association. Moreover, in temperament the architect is touchy, liable to take offence where he conceives his dignity to have been affronted, and therefore anxious for the moral recognition on the part of the community which he has felt that registration implies, and for the more material recognition implied by a higher (relative) standard of remuneration. At the same time he is solicitous for his art, and profoundly disturbed by the ravages of the speculative builder, which his sensitiveness has often inclined him to attribute, not to defects in the laws which govern the user of property, but to the low estimation in which he conceives his own calling to be held by the public at large.

The profession with its peculiar characteristics was thus ill equipped and ill situated to deal with the problems which confronted it. It came to believe that registration would solve these problems and finally to regard registration as an end in itself. The idea of a state register ceased to be that of a (possibly) useful piece of mechanism and became the symbol of a satisfactory professional status automatically solving all problems and therefore striven after for its own sake. Upon reflection it appears that the chief need was unity; but to achieve unity certain obstacles had to be overcome. Differences of qualification between members of the Institute and the Society were one such obstacle. We have seen how this was eventually removed. The oligarchical form of government which characterized the Royal Institute from its foundation was another. It provided one of the motives for the formation of the democratic Architectural Association, and it was an additional factor in bringing about the split in 1884 from which the Society of Architects, also democratic in constitution, arose. It was again a complicating issue in the struggles before and after the War, inasmuch as the claim of the members of the Society to be admitted associates of the R.I.B.A., and the claim of the associates to have their distinctive hall-mark preserved to them without dilution, was confused by the claim of the associates to be admitted to full corporate membership of the Institute, which was resisted by the fellows, and the claim of the licentiates to the same privilege, which was resisted by the fellows and associates alike. Eventually in the charter of 1925 both claims were realized, the additional safeguard of the post-card referendum was inserted in the constitution, and some provision for continuity of personnel on the council was made.

The profession had thus, by 1925, achieved unity in a single

dominating Institute, having a constitution which enabled every grade of members to participate in its politics, and surrounded by its allied societies representing architects in the provinces, the colonies, and the dominions. The way was prepared for an agreed solution of outstanding problems; but the Institute was committed, as the principal mode of solution, to the promotion of a state register. Yet it would seem that these problems, when not already in a fair way to solution, were not susceptible of treatment by that method, which may, indeed, reopen some and intensify others. It has been one of the first and most disappointing results of the registration movement that it has brought into being and given permanent establishment in the professional scheme to two new associations, and has thereby indirectly served, it may be feared, to perpetuate differing standards of qualification and professional practice, of which the dominance of the R.I.B.A. might in time have secured the obliteration. Other problems also, it seems likely, have been made not less but more difficult by the severance of professional authority and its distribution between a number of statutory and voluntary bodies. This will become clear if the difficulties encountered in the last hundred years are now passed in review.

The architectural profession has not had to contend with difficulties of a distinctively ethical nature. The only important issue in the field of professional ethics, the divorce of the architect from building interests, has been settled ever since the foundation of the Institute. The problems have all been either economic, directly or indirectly, or educational, or have had reference to the desire of architects to see good building, and, more prominently, good town-planning in the widest sense of that term. Among objectives that are indirectly, if not directly, economic has been the desire to gain control of the competition system. Inasmuch as this is a problem which has scarcely impinged at all upon the registration movement it may be considered first. The architect is almost alone among professional men in that the substance of the service he is to render can, and indeed must, be epitomized beforehand in a sketch or plan. Consequently, instead of selecting his adviser and then trusting to chance that the advice he receives will be that which is most suited to his circumstances, as a man must do when he retains a solicitor or submits to medical treatment, the building owner can invite a number of architects to tender for him in respect of quality of service in the same way as a number of contractors may be invited to tender in respect of quantum of remuneration.

The competition system is very ancient. It was employed in Athens in the fifth century, and in Italy at the time of the Renaissance. In England it was certainly in vogue in the eighteenth century; and recent spectacular instances in which young and comparatively unknown architects have risen to fame through competition successes have been seen in Liverpool Cathedral and the London County Hall. It is a system, however, which lends itself to abuse. In the absence of skilled advice the adjudicators may be carried away by facility of perspective drawing. If the conditions are not drawn with great care and precision, particularly in regard to proposed outlay, there is a risk that the prize will be awarded, not to the most suitable, but to the most ambitious design, which, when it comes to execution, has to be so radically amended that it compares unfavourably with others which were rejected. At the opposite end there is the risk that the designs will be treated as tenders and the prize allotted to the cheapest—an abuse even more at variance with professional standards. Unless safeguards are provided, there is the possibility of collusion between the adjudicators and a favoured competitor; while finally it is not always realized to what expense competitors are put in the preparation of drawings, and, if the work is not in the end given to the winning architect to carry out, the resulting situation is one which borders upon a fraud.

This problem has engaged the attention of the Institute from its earliest years. As far back as 1838 we find a committee appointed to examine into the working of the system and to make recommendations for reform. The committee were 'deeply impressed with a sense of the great and manifold evils arising from the defective system upon which competitions have been hitherto conducted',¹ and they urged upon the profession 'in the most earnest manner the necessity of refusing to enter into any competition which does not offer a sufficient guarantee that it will be conducted both with intelligence and justice'.² Many subsequent discussions and inquiries were launched by the Institute, the Architectural Association, the Architectural Alliance, and other bodies; and as we have seen, the desire to gain control of the system was one of the motives which brought the Alliance into being. For many years little success was achieved, and in 1879 it was even proposed that fellows of the R.I.B.A. should bind themselves not to enter for any open competition, or any limited

¹ Institute of British Architects: *Report of the Committee appointed to consider the subject of Public Competitions for Architectural Designs* (1839), p. 3.

² *Ibid.*, p. 14.

competition where a substantial honorarium was not offered to each competitor, in the hope that 'such a course of action would ultimately lead to the discontinuance altogether of the Competition system'.¹ In the present century, however, the increasing authority of the Institute, coupled with a growing desire on the part of local authorities and other bodies to secure the best advice, has made it possible to deal with the problem by means of the black list. Where unsatisfactory conditions are reported, a 'Preliminary Warning' is issued to give time for negotiations to be opened up. If the negotiations fail to secure the amendment of the conditions a 'Resolution' is passed by the council and published in the *Journal* forbidding any member to take part; and it has been explicitly stated that a member committing a breach of the competition regulations renders himself liable to 'reprimand, suspension, or expulsion'.² Thus the R.I.B.A. may now be said to have the situation in hand.³

From 'conditions of work' we pass to remuneration. The origin of the architect's traditional fee of 5 per cent. on the cost of the executed works is now lost in obscurity. Wren, it is said, received 5 per cent. on the cost of the City churches. The experience of architects in the nineteenth century was that it was easier to claim the recognized percentage than to get it. Barry for example only got 3 per cent. for the Houses of Parliament; and while it is true that he also got 1 per cent. for the quantities which he took out himself, nevertheless this too was below and not above the fee then generally recognized for quantities. The Architectural Alliance pressed for a 'uniform' scale 'throughout the kingdom'; but though the Institute published a scale embodying the traditional 5 per cent. on the outlay⁴ and could and did gradually secure observance by its own members, it could not, from the nature of

¹ R.I.B.A.: *Transactions*, 1879-80, p. 65.

² See R.I.B.A.: *Journal*, 3rd ser., vol. xxviii (1920-1), p. 366.

³ The method depends for its effectiveness upon the promptitude of members and allied societies in giving the council notice of unsatisfactory conditions. It has been suggested that it would be better if all competitions were banned until the council had given leave of entry; see *ibid.*, vol. xxvii (1919-20), p. 262. Among the 'essential' requirements to which every competition must conform are: (1) the appointment of an assessor who must be an architect of acknowledged standing; (2) the prizes to be distributed in accordance with the assessor's award; (3) the author of the design placed first by the assessor to be employed to carry out the work, and (4) to be paid in accordance with the R.I.B.A. scale of charges. Provision is made for various contingencies, e.g. where the work is not proceeded with; while the rules are not applicable in their entirety to 'small, limited, private competitions'. See R.I.B.A.: *Kalendar*, 1931-2, pp. 772 ff.

⁴ The Institute scale would appear to have been in existence at least as early as 1864; see Institute of British Architects: *Sessional Papers*, 1864-5, p. 2.

things, secure 'uniformity' 'throughout the kingdom'. Such uniformity was impossible without control over every practising architect. This, however, was one of the things which it was expected registration would give; and thus the movement for uniform fees became identified in the minds of many with the movement for registration. The idea was entertained, contrary to all experience in the professional world, that registration would carry with it power to fix minimum fees; and, indeed, from this idea the registration movement derived much of its force. For control over fees to be effective, however, it would be necessary to close the profession and to have a register which would not merely confer a hall-mark on the registered but would at the same time prohibit the unregistered from practising altogether. Accordingly in the bills drafted before, and immediately after, the War, clauses were inserted which would have made invalid, when given by an unregistered person, certain certificates which must be given by the architect in order to safeguard the contractor, for example that so much or all of the work contracted for has been completed to his satisfaction; while to these clauses were added others which would have given power to regulate fees. A study of existing registration Acts should have demonstrated that clauses of the latter type would never be sanctioned by Parliament; while in the event it was found necessary to drop the former also. It may have been a realization of the slender political prospects of monopoly by statute that led the R.I.B.A., which had obtained full control over its own members, to take independent steps. At all events after the War the scale was revised, and the basic fee raised from 5 per cent. to 6 per cent.¹ This step achieved the result that was aimed at and observance has been secured. Indeed, in general the architectural profession would seem to have little cause for complaint in the matter of remuneration, inasmuch as this action on the part of the Institute represents the only instance in which a profession has openly and successfully raised the 'real' (as opposed to the 'nominal') 'standard rate'; and, while non-members are not obliged to, and in many cases do not, observe the R.I.B.A. scale, it nevertheless has a moral effect from which they benefit. Moreover, even supposing, *per impossibile*, that both closure (in the above sense) and price-fixing had secured parliamentary sanction, nevertheless the desired economic monopoly would not have resulted, inasmuch as it would still have remained open to the client to

¹ Strictly, the rise was from 5½ per cent. to 6 per cent., since, whatever it may once have been, the fee then recognized by the R.I.B.A. was not £5 per £100, but 5 guineas per £100. It is now £6 per £100.

dispense with the services of an architect and to rely upon those of the builder alone. Indeed, recent experience has demonstrated that an attempt to put up the price of architectural services is incompatible with the realization of other objectives to which the profession attaches great importance and which have figured very prominently in the arguments put forward for the registration of architects.

Good architecture, in the sense in which that term would now be understood, is an objective that was scarcely compatible with nineteenth-century English philosophy; and a perusal of the pages of the *Institute Journal* reveals the architects of that century as interested less in good building for its own sake than in the proper rendering of the niceties of exotic styles or the application of 'Gothic' to theatres and railway stations. Thus a corporate desire to promote good architecture has only shown itself in the present century; and, as a movement, it has accompanied, if indeed it has not actually grown out of, the movement for town- and country-planning, for the introduction of which into this country, as well as for propagating it with energy and enthusiasm, the architectural profession deserves high praise. Towards the achievement of these objectives state registration, it was believed, would greatly assist. Nevertheless here again there was confusion, for registration of architects can no more give protection against bad building than it can confer the economic advantages which were once hoped of it, unless it implies the employment of a qualified architect for the erection of any and every building structure. It would seem that this has now come to be realized inasmuch as other methods of attack have been adopted. So far as the problem of good building can be dealt with by legislation, the most suitable method is by an enlargement of the scope of the Town Planning Acts and a wider adoption of the 'elevations' or 'Bath' clause; and into these channels efforts are now being directed. The profession can also assist by undertaking responsibility for the education of the public and the builder, and, above all, by ensuring that the services of its members shall be available to a certain type of client on specially favourable terms. This also is coming to be appreciated. 'With the object of assisting in the solution of the National Housing Problem, and having in view the necessity for the employment of qualified Architects on housing work',¹ a reduced scale of fees for such work was agreed between the R.I.B.A. and the Minister of Health shortly after the War; while in 1929 the Institute co-operated with the Council for the

¹ See R.I.B.A.: *Kalendar*, 1931-2, p. 769.

Preservation of Rural England in the launching of a scheme, known as the 'Langdon' scheme for setting up 'panels' of architects in different parts of the country to give advice and prepare plans at less than the scale fee for individual clients of limited means. Thus the solution has been found to lie in the direction of reducing fees (or costs) and not of putting up the price which can only result (and perhaps has resulted) in driving prospective clients into the hands of the local builder.

The third object which it was hoped to achieve through registration was a high standard of qualification among architects. The architect's duties are varied and responsible, and consequently the importance of training is very great. His function is by no means limited to the preparation of elevations and plans. Not only does he, in normal cases, supervise the erection of the works and perhaps take out the quantities, but he is expected to advise on choice of site and on legal restrictions, such as building by-laws, affecting the site chosen. Without being himself an engineering specialist, he must be familiar with the properties of building materials, and every advance in the study of such materials, every new labour-saving invention, involves an increase in that knowledge which forms an essential part of his equipment. In addition he has important responsibilities towards the contractor between whom and his client he stands virtually in the position of an arbitrator, inasmuch as it is his duty to grant the certificates referred to above, in the absence of which the contractor is not entitled to be paid for his work.

The architects inherited from the craftsmen whom they superseded the apprenticeship system of training;¹ and, 'so long as general agreement regarding traditions of design existed, the results of this method were in many ways sufficiently satisfactory. But with the collapse of tradition which the Romantic Movement brought about in England, utter confusion followed in the teaching and practice of architecture.'² Even in the eighteenth century every student whose means allowed it, or whose patron was prepared to finance him, supplemented apprenticeship to an architect or builder by foreign travel; while an early attempt at the provision of academic instruction also dates from that century.

¹ Though this form of training remained the recognized introduction to an architectural career throughout the nineteenth century, it does not appear that the R.I.B.A. ever demanded actual evidence of service under articles. However it was usual to become articulated. Martin Chuzzlewit was articulated to Mr. Pecksniff, 'Architect and Land Surveyor'. Indeed, Dickens's exposure of the abuses of which the system was capable was not lost upon members of the Institute. See R.I.B.A.: *Sessional Papers*, 1869-70, p. 218.

² See R.I.B.A.: *Journal*, 3rd ser., vol. xxviii (1920-1), p. 65.

The Royal Society of Arts¹ came into being about 1740; and it included, *inter alia*, a school of drawing. But in 1768 internal dissensions led to a large secession of its more prominent members, who gained the ear of the King and secured the foundation of the Royal Academy. The foundation included, as a result of the representations of Chambers, a professorship of architecture of which Chambers himself became the first holder. Chambers, it seems, did not take his duties very seriously; but Soane, who succeeded him, created, during his tenure of the chair, what became the most successful architectural school in this country until very recent years. Soane himself had a large practice and many pupils; and the practice, the pupil room, and the professorship were run as a single unit. But with Soane's death this remarkable *atelier* disappeared; the professorship became a virtual sinecure, and the school which went with it sank into an obscurity from which it has never since recovered.

The associations founded in the early part of the last century, so far as their objectives were educational, aimed at the 'improvement', through the medium of lectures, papers, and discussions, of those who were already members, if not in actual practice as architects. The motives which led to the foundation of the London Architectural Society were thus set forth: 'Among the institutions so liberally established in this city, there is not one which has appeared calculated for the encouragement of architecture. . . . Influenced by these considerations a few gentlemen have united themselves into a society. . . . They propose to improve one another, and they hope to improve the science.'² Accordingly every member was required to contribute annually 'an Architectural Design never before in any way made public, . . . and accompanied with observations critical and explanatory', as well as 'an Essay on some subject connected with civil architecture'.³ The Architectural Association also, up till 1869, aimed at the 'improvement' of architects rather than students; but in that year the Association began to hold evening classes after office hours for articulated pupils. The provision of proper facilities for the education of architectural students, however, made little progress before the end of the century. It had to encounter the opposition on the one hand of those who thought that registration should come first,⁴ and on the

¹ Then the 'Royal Society of Arts, Manufactures and Commerce'.

² London Architectural Society: *Essays*, 1808, pp. iii and iv.

³ *Ibid.*, p. ix.

⁴ It is characteristic that the Society of Architects, though it began to press actively for registration from its foundation in 1884, did not begin to impose an examination test for membership until 1897; see above, p. 181.

other of those who thought that art could neither be taught nor made the subject of an examination test.¹ With the institution of examinations for admittance to the associate grade in the R.I.B.A. in the 'eighties one branch of the opposition began to lose ground, and in 1894 an architectural school in Liverpool, which is now a department of the University, began to give a full day-time course. The Architectural Association afterwards followed suit, and a number of other universities have since set up architectural schools.

The architectural schools had not long been established before they began to arouse the jealousy of the Institute by demanding exemption for their members from the Institute examinations; but eventually a compromise was reached having many excellent features, which will be discussed in a later part of this study. Briefly the schools secured exemption for their students, first from the intermediate, and later, in 1920, from the final examination, with the exception of a single paper. At the same time the R.I.B.A. set up a Board of Architectural Education,² responsible both for the R.I.B.A. examinations and for the recognition of schools for purposes of exemption. The constitution of the Board was modelled on that of the G.M.C., though with important modifications. It is made up of representatives of the council of the R.I.B.A. and of the allied societies, of every school enjoying full 'recognition', and of a certain proportion of the schools recognized for exemption from the intermediate only, and, in addition, of certain outside bodies such as the Board of Education, the Institute of Builders, the Incorporated Association of Head Masters, and the Head Masters Conference. In theory every act of the Board requires the sanction of the Institute council; but in practice it has had very largely a free hand.

This compromise appeared to have given general satisfaction. Where they have been established long enough for results to be gauged, namely in London and Liverpool, the schools have already driven out the old apprenticeship system.³ The way was thus clear for the total supersession of that system so far as admittance to the Institute was concerned; but upon the organization thus built up there has now been superimposed the Architects Registration

¹ 'The real difficulty', said the President of the Institute, himself an advocate of examinations, in 1879, 'lies in deciding upon the artistic capacity of a candidate.' R.I.B.A.: *Transactions*, 1879-80, p. 13.

² This Board should not be confused with the statutory Board of the same name set up under the recent registration Act.

³ Those taking the full five years' course gain their practical experience by spending six months out of the five years in an office under the supervision of the school.

Act with its own Board of Architectural Education having many more outside members and entirely independent of the Royal Institute. Presumably both Boards will continue to function, each holding its own examinations and each recognizing the examinations of other bodies for purposes of exemption; or it may be that the original Board will be wound up, the Institute continuing to hold its own examinations, but accepting for purposes of exemption such examinations as the statutory Board recognizes. It seems certain, however, that the new Board with its wider jurisdiction, covering all applicants for registration, whether they aspire to membership of the R.I.B.A. or not, will inevitably be driven to consider wider and more conflicting interests and will be unable in consequence to adopt so high a standard for recognition purposes as that set by the older Board. But whatever solution is ultimately found, we cannot think that the new Act will give results superior to those which the profession and the schools are already achieving independently.

SURVEYORS, LAND AND ESTATE AGENTS, AND AUCTIONEERS

To present a clear picture of the unnamed profession,¹ whose diverse functions have little in common save that they all, directly or indirectly, have property in land for their subject-matter, is a task of some difficulty. There are three principal associations: the Chartered Surveyors' Institution, the Auctioneers' and Estate Agents' Institute, and the Land Agents' Society. These three bodies, however, do not represent three different professions. There is much overlapping membership between them, and upon many matters of professional policy they act in co-operation through a joint standing committee of their councils. Though a number of distinct specialisms are to be found within this field, yet none of these associations can be said to be exactly conterminous with any one or more specialisms. They are distinct for historical rather than functional reasons.

The Chartered Surveyors' Institution is the oldest of the three. Long familiarity with the Ordnance Survey has led us to think of a 'surveyor' as some one who measures the country and takes angles and levels from which to construct a map of it. By derivation, however, the word signifies no more than one who takes a

¹ In America its members are known as 'Realtors'.

view of something; and it has in fact long had other applications, as in 'building surveyor', 'quantity surveyor', and 'surveyor of taxes'. The sense common to all its uses is that of one who measures, computes, or estimates; and it was as one whose special skill lay in computing the value of landed property that the professional surveyor first made his appearance in the early part of the last century. The inclosure of the commons and wastes, the commutation of ecclesiastical tithe, the enfranchisement of copyholds, and the compulsory acquisition of land for purposes of railway construction, called for a new type of expert, competent to prepare plans of land about to be enclosed, or, it might be, to assess the respective interests of lord and tenant in copyholds about to be enfranchised. At the same time the supersession of traditional farming methods by commercial agriculture and the growth of large urban areas greatly enhanced the value of property in land, so that the landed proprietor found it advantageous to employ the services of an expert manager. For such employment the qualifications required were essentially those of the surveyor.¹

The Institution of Surveyors was founded in 1868 as an association of valuers and managers of landed property. An earlier association, the Land Surveyors' Club, had arisen as far back as 1834; but its objects were social rather than professional, and it proved to be shortlived.² The Institution, on the other hand, advanced rapidly in membership and prestige, and in 1881 received a charter as the 'Surveyors' Institution'. By that name it continued to be known until 1930, when the present title of 'Chartered Surveyors' Institution' was adopted.

The Chartered Surveyors' Institution is not only the oldest but also the largest association in this field. Its 6,000 qualified members include an unusually wide variety of specialists; notably mining surveyors, whose function embraces the valuation, management, and development of mineral property;³ building surveyors,

¹ See an interesting paper submitted by the English delegates to the International Congress of Géomètres, Paris, 1878, and printed in *Institution of Surveyors: Transactions*, vol. xi (1878-9), pp. 29 ff. See also an historical review of the first fifty years of the Institution, *ibid.*, vol. li (1918-19), pp. 5 ff.; also 'Sixty years of the Institution', a paper read by the Secretary at the Diamond Jubilee Meeting in 1928, *ibid.*, vol. lxi (1928-9), pp. 2 ff.

² The Land Surveyors' Club is not to be confused with the Surveyors' Club, founded in 1792 as an association of building surveyors. The Surveyors' Club was equally shortlived.

³ 'Mining surveyors' or 'mine surveyors' fall into two fairly clearly marked groups: the agents of royalty owners who generally belong to the Institution, and persons holding mine surveyors' certificates under the Coal Mines Act who are employed to make working plans of mines and are seldom members of the Institution.

who supervise the actual erection of the works in cases where this is not done by the architect himself; quantity surveyors, whose function it is to work out the 'quantities' of each material required for the execution of the architect's design, so as to enable the contractor to tender; rating surveyors; agricultural and tenant-right valuers, and other smaller groups. In some instances the specialists have their own association; in others they have not. But the specialist associations, where they exist, are small, and do not aim at independence of the Chartered Institution, but rather at co-operation with it. Thus the Rating Surveyors' Association, founded in 1909, has a membership of only 130. In the preface to its rules it is stated 'that though this association is independent of the Surveyors' Institution, it is in no sense opposed to it, but on the contrary it is the intention to act in harmony and as far as possible in conjunction with that Institution, which it recognizes as the official representative of the Surveyors' profession'. The quantity surveyors, on the other hand, have no separate association; but they find an organ of expression in the Quantity Surveyors' Committee of the Institution. All questions peculiarly affecting quantity surveyors come before the Committee in the first instance; and though final decisions upon matters of policy remain to the council, the council follows, generally speaking, the recommendations of the Committee.

The examination system of the Chartered Institution reflects its desire to accommodate these specialists. There are two classes of qualified members: fellows and professional associates. The charter of 1881 gives them the right to use the initials 'F.S.I.' and 'P.A.S.I.'; and the title 'Chartered Surveyor' has been adopted under the by-laws. For the professional associateship an examination in general knowledge and two examinations in professional subjects must be taken. The latter are so arranged that every candidate can, indeed must, specialize in a certain group of subjects. There are four groups corresponding to four main branches of practice, namely, agricultural estate management, urban estate management, building and quantities (which must be taken together if at all), and mining.¹ Considerable encouragement is given to university graduates. Those who hold degrees in a 'course approved by the Council as appertaining to the profession' need only take one examination,² thus qualifying in one instead of two years; while those who have passed the examinations for the estate management

¹ The examinations are accepted by the Civil Service Commission as qualifying for permanent establishment in the Valuation Department of the Inland Revenue. Surveyors' Institution, *Transactions*, vol. li (1918-19), p. 16.

² See the Institution's Rules of Examination.

degree at London or Cambridge are exempt altogether. The requirements in regard to practical training are unusual. Every candidate for the 'P.A.S.I.' must be over twenty-one years of age and must 'have acquired a practical knowledge of surveying' in one or other of its branches. But no minimum period of training is prescribed.¹ The only specific requirement is that any person entering for the intermediate examination must, at the time of entering, be engaged either as a paid assistant or as an articled pupil in an office where he 'is obtaining practical experience in the Profession', unless he is taking a course at a 'recognized place of instruction'.² The term 'recognized place of instruction' appears to include the majority of the universities and agricultural colleges. A candidate for the fellowship must have occupied for five years a position of responsibility as principal or manager of an 'established' practice, or in the public service.³ An 'established' practice is defined to mean one of 'a distinctly sound and high professional character', and one in which the work, which has fallen to the candidate for election, has been 'professional' rather than 'commercial', and has had to do with the valuation or management of property, or the designing or measuring of constructional work, rather than with the 'collection of rents' and the 'letting of houses'.⁴

In the charter of 1881 the profession of a surveyor was defined as 'the art of determining the value of all descriptions of landed and house property and of the various interests therein, the practice of managing and developing estates and the science of admeasuring and delineating the physical features of the earth'.⁵ No mention was made of the 'letting of houses' or of other 'commercial' functions; indeed, at that date, functions relating to the sale and letting of property hardly came within the province of the surveyor. These functions had originally formed part of the work of a solicitor. Towards the close of the eighteenth century the practice grew up of disposing of real estate by auction; and when this was done, it became the custom among solicitors to call in an outside specialist to take charge, at first, simply of the actual conduct of the bidding. Gradually the outside specialist took over more and more of the work; he began to prepare the particulars and to advertise the property for sale, until now nothing remains to the solicitor but the drafting of conveyances, advising upon title, and other matters of a purely legal character. Where property is disposed of

¹ By-law 5 of the Chartered Surveyors' Institution.

² See the Rules of Examination.

³ See Surveyors' Institution: *Transactions*, vol. lvi (1923-4), p. 297.

⁴ *Ibid.*, pp. 297 and 298.

⁵ *Charter of the Surveyors' Institution*, 1881, preamble.

otherwise than by auction, the solicitor has relinquished the non-legal part of the work to a broker known as a house or estate agent. In the latter part of the last century an association was formed by each of these classes of intermediary between buyer and seller. The Institute of Estate and House Agents came into being in 1872, and the Auctioneers' Institute in 1886. In 1912 they amalgamated to form the Auctioneers' and Estate Agents' Institute of the United Kingdom.

The Institution and the Institute represent functions which were originally distinct. The distinction may be regarded as being founded upon a difference of technique. Valuation based upon accurate measurement formed the substance of the surveyor's technique, as it still forms the basis of the Institution examinations. This technique can only be acquired after a real intellectual training which is largely scientific in character. The auctioneer's technique and the estate agent's technique, on the other hand, so far as they demand an intellectual training at all, demand a training which is institutional rather than scientific. But though two types of skill may be involved, there is only one subject-matter, namely, property in land and houses; and it is a comparatively short step from the possession of one type of skill in relation to that common subject-matter to the acquisition of another. So to-day the functional distinction is rapidly passing away; many surveyors practice as estate agents, and many, indeed most, auctioneers and estate agents undertake valuations. It may be admitted that the function of auctioneering enjoys, even to this day, a somewhat lower social prestige than other branches of real-estate practice. With the auctioneer's function there is of necessity associated a high degree of publicity, and many surveyors would on this account regard it as slightly derogatory to practise auctioneering. It may be that it is here that we should look for an explanation of what is otherwise rather surprising, namely, that so far as we know, no suggestion has ever been put forward for the complete merger of these two professional bodies.

The Auctioneers' and Estate Agents' Institute does not aim at spreading its net so wide as the Chartered Surveyors' Institution. It contains some 5,000 qualified members; but of those in independent practice 'probably 85 per cent.', we are told, 'conduct a general class of business'.¹ They are distinguished as fellows and associates, and they use the initials 'F.A.I.' and 'A.A.I.' The examinations are not lower in standard than those of the Institution,

¹ *Surveying, Land and Estate Agency, and Auctioneering*, Choice of Career Series, No. 4 (1929), p. 8.

but they differ somewhat in character, being markedly less scientific in emphasis. The practice qualification for the associateship is rather more stringent than that prescribed for the corresponding grade in the Chartered Institution. Three years must be served under articles, or five years as a paid assistant, to a fellow of the Institute; but five years' service in some other professional capacity will be accepted if approved by the council. These requirements are dispensed with in the case of candidates who have been in practice for three years on their own account; but not in the case of university graduates. Five years' tenure of a responsible post is again the qualification for the fellowship.

Unlike the Auctioneers' and Estate Agents' Institute, the Land Agents' Society is an association of specialists. But unlike the Rating Surveyors' Association and other specialist bodies referred to above, it has grown up in complete independence of the Chartered Surveyors' Institution, and as a chartered body has achieved a standing which entitles it to rank alongside the Institution and the Institute as one of the three principal associations in this field. Nevertheless in one sense the Society may be regarded as an offshoot of the Institution; for the Institution has always included among its members persons engaged in the management of agricultural estates. But such persons have never constituted more than a minority in an association which contains very heterogeneous elements; and it was this fact, coupled with a sense of the peculiarity of their position, which led the land agents to form a distinct society catering for their wants alone.

Certain factors, in particular the factor of patronage, had for long retarded the growth of a corporate consciousness among the managers of rural estates. In early times the management of such estates—largely a matter of traditional routine—was shared between the solicitor, who was generally also the steward of the manor, and a bailiff, who, whatever his qualifications, was not normally a person of any intellectual training. The effect of the inclosure movement, and of the revolution in agricultural economy which accompanied it, was to present the landowner with an extremely profitable investment, though one which required expert management if it was to yield the full return of which it was capable. But the supersession of the farmer-bailiff and the estate-solicitor by the trained surveyor or land agent was a slow process which was not completed until after the agricultural depression which began in the late 'seventies of the last century. The country firms of surveyors, though they secured some, did not secure the bulk of this work. Owing to the very large units in which property was

then held in this country it became the practice to appoint one or more whole-time resident agents to be responsible for the management of each estate; and the typical agent, residing on the estate he managed, was bound to his employer by a close personal tie. Only very gradually did he come to think of himself as possessing interests which he shared with the managers of other estates. Moreover the realization, even when it came, was not one of community of interest with the general body of members of the Surveyors' Institution, 'most of the energies of which' it was felt 'were devoted to urban and suburban properties';¹ while its country organization was admittedly extremely defective. In these circumstances the Land Agents' Society came into being in 1902.

The Land Agents' Society, with little more than 900 fully qualified members, is a much smaller body than either the Institution or the Institute, but it is the most homogeneous of the three. This is secured in part by its somewhat unusual entrance qualifications. That which distinguishes the land agent from other professional men is not the nature of the tests he has undergone, but the fact of his being employed in the management of an agricultural property of a certain size. Consequently the passing of certain tests, examination and otherwise, does not, as in other professional associations, of itself admit to membership. There are two grades of full members, fellows and qualified associates, and the charter gives them the right to use the initials 'F.L.A.S.' and 'Q.A.L.A.S.' respectively.² Every candidate for election as a qualified associate must show that he 'is a land agent and a genuine manager of a landed estate or estates' or that he is a sub-agent or assistant to an agent who is a fellow or qualified associate of the Society. A candidate for the fellowship must show that he 'is a land agent and a genuine manager of a landed estate or estates', that he has had five years' experience as an agent, sub-agent, or assistant, and that he 'is managing' or 'has at some time managed for at least five years' an estate or estates of not less than 2,000 acres.³ Moreover it is laid down that the expression 'genuine manager of a landed estate or estates' is not to include a 'practising solicitor, house agent, auctioneer, accountant, or others who undertake the management of estates as part of their other business,

¹ See *Journal of the Land Agents' Society*, vol. xx (1921), p. 30.

² And also the titles 'Chartered Land Agent' and 'Chartered Land Agent (Q.A.)'.

³ By-laws 66 and 67 of the Land Agents' Society. By a 'sub-agent' is meant a person who is responsible for the management of the whole or part of an estate under the supervision of a head-agent.

nor a land agent who holds an auctioneer's licence'.¹ More unusual still, any member ceasing to possess the qualifications appropriate to the grade to which he belongs 'shall *ipso facto* cease to be a Member', unless the Council otherwise determine.²

In recent years, however, developments have taken place which have greatly weakened the land agent's sense of his own distinctness. The break-up of the larger properties has favoured the general practitioner at the expense of the whole-time employee. The result has been a marked falling off in membership and considerable disquietude in the Society. In the interval which has elapsed since the Society's earlier years the Chartered Institution has taken steps to remedy those constitutional defects which were the main source of grievance among its country members; and in these circumstances it is not surprising that a considerable body of opinion has come to favour the merger of the Society in the older and more widely representative Institution. A formal approach was actually made by the Society in 1922; but the negotiations broke down because the Society was advised that it had no power under its rules to amalgamate with any other body.

In the meantime there had been taken what was perhaps a more striking departure. In 1921, outside those professions where entry is controlled by the State, there was no professional association of similar standing which did not impose an examination test. But whereas in the past the Society had not needed to rely upon examinations for prestige, it was considered that now only the institution of such a test could save it from extinction. There were, however, difficulties to be faced. The Surveyors' Institution was already well established as the examining body in this field; and the usual course followed by those who desired an examination qualification was to sit for the Surveyors' examinations in the appropriate division, and then, so soon as eligible, to get elected to the Society. Were the Society to impose its own examinations, it was argued, many candidates would be obliged to sit twice over, or, more likely, would refrain from seeking admission to the Society altogether. However, those in favour of examinations won the day: for two principal reasons—because the Society was anxious to apply for a charter, and it was believed that the Privy Council would not entertain a petition from any professional body not

¹ By-law 67. The 'licence' referred to is the annual licence required to be taken out by any person desiring to practise as an auctioneer. House and estate agents and persons undertaking valuations are also required by law to take out annual licences. The licences are for revenue purposes only; no professional control is exercised by this means.

² By-law 84.

imposing an examination test; and because it was put to them that the Government would not otherwise give employment to members.¹

The examinations came into full operation in 1923. To meet the case of persons who are also candidates for admission to the Chartered Surveyors' Institution, a pass in the Institution's intermediate exempts from the Society's Part I. A degree in agriculture or estate management at Oxford, Cambridge, or London also exempts from Part I provided the appropriate subjects are taken. But, though the number of candidates coming forward has been very fair, in fact neither this nor any of a number of other changes which have been introduced since the War (e.g. the circularizing of landowners, the institution of joint conferences with the Central Landowners' Association, the raising of the prohibition on practice in partnership with an auctioneer) has served to avert the decline in membership. Whether the grant of a charter in 1929 will be found to have had that effect it is as yet too soon to say. Amalgamation with the Chartered Surveyors' Institution is bound, we think, to be heard of again.² Up to a point the fear is no doubt well grounded that merged in the general body of surveyors the land agent would find himself 'lost in a sea of complex interests';³ though it is apparent from the example of the quantity surveyors that it is not impossible to devise constitutional machinery giving a large measure of autonomy to sectional groups. Nevertheless the position of the land agents as 'landlords' men'⁴ is peculiar. They are the trusted servants rather than the professional advisers of their employers; and it may be that so long as the system of patronage continues they cannot become wholly assimilated to the other groups of professional workers in this field. Taking the longer view we may be inclined to say that eventually the agent in general practice, having charge of a number of small properties, will become the rule; and if so the process of assimilation will then be complete. But it is not perhaps certain that this is the outcome towards which events are tending. The Society when it looks into the future merely betrays a sense of

¹ E.g. in the Board of Inland Revenue, where the Society's examinations are now recognized equally with those of the Institution and the Institute; see *Journal of the Land Agents' Society*, vol. xxv (1926), p. 333.

² It is significant that the Society has thought fit to secure powers to amalgamate with 'any kindred Society'; see *Charter of the Land Agents' Society* (1929), clause 36.

³ See the correspondence columns of the *Journal of the Land Agents' Society*, vol. xxi (1922), p. 49.

⁴ See *Journal of the Land Agents' Society*, vol. xx (1921), p. 413, where this phrase is used, though not in quite the sense we give to it.

bewilderment. Its members would like to see the farmer protected and the landlord relieved of his fiscal burdens. But they speak with no certain voice. All that can be said is that they do not look forward (at least not in public) to the day when the state-owned acres of England shall be parcelled out into neat areas, each of a size appropriate to its being managed at a proper salary by a single agent resident on the estate.

Mention has already been made of the fact that in many matters of professional policy all three associations act in close conjunction. It remains to sketch in outline what that policy is in regard to certain more important problems. In the educational sphere both the Institution and the Institute have aimed at something more than the mere holding of examinations and laying down qualifications for admission. Both bodies have shown a praiseworthy interest in the giving of the instruction which it is the purpose of the examination to test. The ultimate aim is to secure that all entrants to the profession shall have attended a university or training institution of some kind. The policy of providing that at least some of those passing into the profession each year shall possess academic qualifications seems to have originated in the Surveyors' Institution, about the beginning of the present century, when they began to offer scholarships tenable at the university. The Surveyors are also in touch with other educational institutions, such as the Royal Agricultural College, where they are represented on the governing body. This and a number of other colleges of agriculture are 'recognized places of instruction', attendance at which is accepted in lieu of pupilage. Grants are made to the universities of Oxford and Cambridge for their schools of agriculture, forestry, and rural economy; while in the interests of scientific research a grant is also made to the Rothamsted Experimental Station. Only a minority of universities, however, possess schools of agriculture or estate management; and the profession has thus been led to found a training institution of its own. The War memorial of the Auctioneers' and Estate Agents' Institute is to be seen in the College of Estate Management in Lincoln's Inn Fields. The College owes its origin largely to the efforts of the then President of the Institute and of Adkin; but the Surveyors were quickly induced to give it their support. The project met with success, and in 1922 the College received a charter. The charter defines its principal object in the following terms: 'To provide training and educational facilities for students for all or any of the professions vocations or callings . . . connected with the management development admeasurement valuation or other dealing in or with

land or other property'.¹ The Land Agents' Society did not become associated with the College until 1929. It now appoints two governors, and the nominees of the three professional associations form a majority on the governing body. All three associations give the College financial support. It is a 'recognized place of instruction' for the Surveyors' examinations, and in recent years the majority of those coming successfully through the examinations have been students of the College. It also works in close conjunction with the London School of Economics, and is an accredited training institution for the London B.Sc. in estate management. There are full-time and evening classes, and correspondence courses for those unable to attend in person. The most recent development has been the formation of centres in the provinces where lectures can be given.

With a view to co-ordinating ethical policy meetings are held from time to time between the professional practice committees of the Institution and the Institute; and memoranda are drawn up outlining, for instance, 'the principles which guide members of the two bodies, in their relationship with other practitioners, in the conduct of their business'.² Severe disciplinary measures are seldom taken; and, 'although . . . lapses . . . may occasionally be brought to the notice of the Council, an expression of disapprobation on their part usually suffices to prevent a recurrence'.³ It is noteworthy that none of these associations prohibits advertising. The Land Agents' Society prohibited it before the War; but, 'after carefully weighing the changes that have taken place', the council have decided that there would be no objection to a member inserting an advertisement in the local press announcing that he had started business in a new centre and stating what work he was prepared to 'undertake'.⁴ The Institution and the Institute, though they have never banned advertising, are clearly anxious to keep it within bounds; thus, 'while the Council [of the Institute] recognize that under modern conditions the seeking of instructions, whether by advertisements in the public press, by circular, by personal letter, or other similar means, cannot be precluded, they desire to remind Members of the necessity for minimizing as far as possible the incompatibility of such methods with the generally accepted standards of professional practice'.⁵

¹ *Charter of the College of Estate Management* (1922), clause 4.

² Surveyors' Institution, *Transactions*, vol. lviii (1925-6), p. 295.

³ *Ibid.*, vol. li (1918-19), pp. 22 and 23.

⁴ Quoted from a circular letter to members dated Oct. 1932, which we have been allowed to see.

⁵ From a letter to members dated 1925, which we have been allowed to see.

There is one point on which the ethics of the Institution and the Institute are clear and definite:¹ there must be no 'dealing' by members in articles which it may be their professional duty to advise their clients to purchase. The Institute lays it down that 'no member shall establish or join either as principal or assistant any commercial firm, or undertaking, for the purpose of carrying on or assisting to carry on professional business as an adjunct to or in connexion with the commercial business of such firm'.² The Chartered Institution is understood to insist with equal strictness upon the general principle, though no specific ruling on the point has been incorporated in the constitution.³ The abuse it is sought to guard against is that of an employee in the house-agency department of a multiple shop advising a client to have, say, central heating installed in his house, and adding that if he will step this way he will be shown a system that can be thoroughly recommended. Nevertheless the rule has provoked a somewhat bitter controversy. It has resulted in many resignations from the Institute; and the promotion in 1923 of a registration bill, under whose terms it was proposed to exclude such persons from registration, precipitated the formation of a rival body, the Incorporated Society of Auctioneers and Landed Property Agents. Both the Institution and the Institute attempted, though without success, to oppose the incorporation of this Society as a company not for profit. It has shown itself to be a very live body, and a membership of some 2,000 has now been attained. Examinations have been instituted, and the College of Estate Management has arranged courses to prepare candidates for them. It has been actively concerned in the movement to prohibit 'dealers' rings' and 'mock auctions'; and praise must be given to its efforts in this and other directions. At the same time it is not desirable that professional men should be financially interested in the advice they give to their clients, and we are bound therefore to look forward to the passing away of those conditions which at present keep the Incorporated Society apart from the Institute.

The Institution and the Institute have long co-operated to publish identical scales of fees. For architectural work, when undertaken by a surveyor, and for quantity surveying, the scale

¹ The point is one that hardly arises among members of the Land Agents' Society.

² *Articles of Association of the Auctioneers' and Estate Agents' Institute*, article 92 (2).

³ No doubt the point is covered by 'Fundamental Rule' no. (1), which provides that 'a Member shall not . . . be connected with any occupation . . . inconsistent with the profession of a Surveyor'; by-law 24 of Chartered Surveyors' Institution.

is that of the R.I.B.A. The fees laid down in the scale, though not rigid minima, are generally speaking high; and the profession is undoubtedly prosperous in both its main branches. The land agents stand somewhat apart. Before the War the Land Agents' Society did not concern itself with the remuneration of its members. Recently, however, some action has been felt to be necessary; and after negotiation a scale was published which accorded with those of the other two bodies. But the scale does not help the salaried man, and it is the problem of the smaller whole-time resident agent which has given the Society most concern since the War. At the time when the scale was first adopted a memorandum was circulated to members 'setting forth' the 'views' of the Council on this matter.¹ But from the nature of the case little can be done.

All three associations have interested themselves in those wider problems with which their members are necessarily brought into contact, and they are constantly consulted by the Government on matters affecting agriculture, land tenure, and rating and taxation. But though the professional associations are satisfied that the qualifications they stand for are appreciated by Parliament and government departments, they have not been satisfied that they are understood by the lay public. At the time of the amalgamation of the auctioneers with the estate agents in 1912, it was agreed that a registration bill should be promoted. No action was in fact taken at that time; but after the War the question was raised again and all three associations became interested. They were faced with a difficulty that did not present itself to the patent agents, the dentists, or the nurses; for, just as the Institution, the Society, and the Institute do not represent functionally distinct groups, so there is no clear dividing line marking off the landed property profession as a whole from its neighbours—from architects and civil engineers on the one hand, and from accountants and solicitors on the other. When, therefore, registration began to be actively discussed in 1919, it was seriously proposed that a group of cognate professions should co-operate in the promotion of a joint bill. This policy was advocated by the President of the Institution. 'I am . . . strongly of opinion,' he said, 'that the time has now come when the public should be protected from the unqualified architect, engineer, and surveyor in the same way as they already are from the quack doctor and the uncertificated lawyer.'² The difficulty, he proceeded, is that 'modern practice overlaps to a very considerable degree. The architect and the engineer are not uncommonly a single

¹ *Journal of the Land Agents' Society*, vol. xx (1921), p. 358.

² *Surveyors' Institution: Transactions*, vol. liii (1920-1), p. 29.

person, while each frequently attaches to his business that of a surveyor and valuer. The surveyor, too, particularly in the southern half of England, is often an auctioneer as well.'¹ He was in favour therefore, of 'conjoint action'.²

In the subsequent negotiations 'conjoint action' was shown to be impracticable; but the discussions were continued between the surveyors, the land agents, and the auctioneers. The Land Agents' Society refused to be party to a scheme which in any way restricted the freedom of the landowner to employ whom he chose as his salaried agent; but this point was conceded,³ and it was agreed that the bill should strike only at the freedom of the unqualified to set up in independent practice. The Landed Property Practitioners (Registration) Bill, settled by a joint committee of the three associations, was introduced into the House of Commons in 1923. The scheme of the bill was to create certain 'specified duties', including, amongst others, the management, valuation, sale, and letting of land and house property. Any unregistered person, undertaking 'on behalf of any other person'⁴ any of the 'specified duties', was to be disabled from recovering his fees; and a penalty was imposed upon any unregistered person describing himself as a 'land agent',⁴ 'estate agent', 'surveyor', 'quantity surveyor', 'valuer', 'house agent', or 'auctioneer'. The register was to be in the custody of a Board representing the promoting societies in a large majority and certain government departments; and though all existing practitioners were to be entitled to come on the register at the start, admission in the future was to be confined to professional members of the three associations and such other persons as might pass an examination, or become the holders of a degree, approved by the Board. To guard against opposition and to protect the members of other professions, a saving clause was added exempting from the provisions of the bill all solicitors and any architect or civil engineer belonging to one of the well recognized professional associations in those fields. The architects and civil engineers seem to have been satisfied with this;⁵ but the Law Society opposed the bill strenuously from the first. Opposition also came from the house and estate agents in the employment

¹ Ibid., p. 30.

² Ibid., p. 31.

³ See *Journal of the Land Agents' Society*, vol. xxi (1922), p. 103; see also *ibid.*, p. 255.

⁴ It is by no means clear from the text of the bill how the salaried land agent was to be excluded from its operation, though this was unquestionably the intention of the promoters.

⁵ There was opposition from architects and engineers not attached to one of the principal associations in those professions.

of commercial firms, from the National Farmers' Union whose members do a certain amount of auctioneering, and from the National Federation of Building Trades Employers. During the following year the joint committee were still hopeful of overcoming the opposition by suitable amendment; and it was anticipated that the bill would again be introduced. This, however, proved not to be the case; in 1926 the joint committee had to recommend that 'in view of the uncompromising attitude of the Law Society . . . no steps should be taken in the direction of re-introducing a Registration Bill at the present time'.¹ There we presume the matter will remain.²

ACCOUNTANTS

History and Organization

IN 1930 the Board of Trade appointed a committee to inquire and report whether it was desirable to restrict the practice of 'the profession of accountancy' to persons whose names would be inscribed in a register. The committee found it no easy matter to say what constituted 'the profession of accountancy'; and when they reported that 'accountancy has been definitely established as a profession in Scotland for more than three-quarters of a century, and in England for half a century',³ they had in mind the period during which there had been in existence professional associations of accountants in independent practice. Accounts, in the sense of records of cash transactions, have been kept since very ancient times; for example in England the Rolls of the Exchequer go back to the year 1131. Modern accounts, however, aim at more than the mere recording of cash transactions. They are designed to give a complete statistical record of all the activities of a business, so that the modern accountant has been defined as 'one who is competent to design and control the systems of accounts required to record the immense volume of transactions that take place every day in the world of industry, trade and finance', and 'to marshal such records, so as to convey, by means of figures, an intelligible expression of the experience, at all times and stages, of the business

¹ *Journal of the Auctioneers' and Estate Agents' Institute*, vol. vi (1926), p. 676.

² The Incorporated Society has since promoted an independent bill; but it did not even secure a first reading and it is unlikely that such a body will succeed in drafting a measure which would be agreed to even within the profession.

³ *Report of the Departmental Committee on the Registration of Accountants* (1930), Cmd. 3645, p. 6.

or industry, in terms of money or money's worth'.¹ Accounting in this sense is based upon the device of double-entry book-keeping which was first perfected by the Italians,² and was introduced into England in the sixteenth century. During the seventeenth and eighteenth centuries accountants begin to be heard of in small numbers in this country, both in the counting houses of merchants and in independent practice;³ but it was the industrial revolution and the accompanying increase in the scale of industry and commerce, which necessitated the regular employment of accountants by business firms, and called into being a 'profession' of accountants in independent practice, to perform certain fiduciary and quasi-legal duties which demand familiarity with book-keeping technique.

Historically, as the departmental committee pointed out, the 'profession' of accountancy originated in Scotland. The Court of Session early adopted the practice of seeking the aid of professional 'accountants' to assist in managing the estates of bankrupts, lunatics, infants, and other persons not regarded as fit to look after their affairs.⁴ Thus the professional accountant made his first appearance almost as a kind of lawyer; and Sir Walter Scott, discussing, in 1820, the choice of a career for his nephew, suggests that he 'cannot follow a better line than that of an accountant',⁵ which he couples with the 'other branches of our legal practice'.⁶ In 1853 an association of accountants was formed in Edinburgh, and later in the same year a second association was formed in Glasgow. It was intended so far as possible to organize the profession on the same lines as the 'other branches of . . . legal practice', and to confine admission to qualified persons. With this in view the Edinburgh association petitioned for a charter, which was granted in the following year (1854), when the association was incorporated as the Society of Accountants in Edinburgh. The charter recited that the duties of an accountant in Scotland

¹ See *The Accountant*, vol. lxiii (1920), p. 605.

² Hence the symbols 'l s. d.' (lire, soldi, denarii) which head the columns of our ledgers. The earliest accounts kept on the principle of double-entry come from Genoa in the fourteenth century, and the earliest known treatise on the method was published by a Venetian mathematician, Paciolo, in 1494. For the early history of the profession see Richard Brown, *A History of Accounting and Accountants*, 1905.

³ See Departmental Committee on the Registration of Accountants (1930), *Minutes of Evidence*, pp. 53 and 119.

⁴ In England at this time this duty devolved upon certain officials of the court itself, 'many of them ill-qualified to perform accounting work'. See Richard Brown, *op. cit.*, p. 232.

⁵ Brown, *op. cit.*, p. 197, quoting from Lockhart, *Life of Scott*, vol. vi, p. 223.

⁶ *Ibid.*

required 'great experience in business, very considerable knowledge of the law and other qualifications which can only be attained by a liberal education'.¹ Accordingly, the Society was empowered to hold examinations and to prescribe courses of training for entrants. Immediately after incorporation the Society cast about for a distinguishing title for its members, and the designation of 'Chartered Accountant' was hit upon together with the abbreviation 'C.A.' This title and abbreviation were also adopted by the members of the Glasgow association, which received a charter in 1855 as the Institute of Accountants and Actuaries in Glasgow, and of a third association, the Society of Accountants in Aberdeen, which was incorporated by charter in 1867. The three chartered societies in Scotland, embracing a total membership of nearly 3,000, work in very close co-operation, and thus resemble the Inns of Court. In 1892 they went a long way towards assimilating their rules of admission, and set up a General Examining Board, corresponding to the Council of Legal Education, to conduct the examination of all candidates. In 1915, in order to achieve a more complete co-ordination of policy, a standing joint committee was constituted; and though its functions are only advisory, the committee is enabled under its powers to consider practically any matter relating to the profession.

In England it appears to have been the Companies Act of 1862 and the Bankruptcy Act of 1869 which caused the emergence of the professional accountant in independent practice. The 1869 Bankruptcy Act abolished the Official Receiver and provided for the appointment of receivers by the creditors, who generally appointed an accountant; while the 1862 Companies Act, in giving an impetus to the formation of joint-stock trading companies, created a demand for professional accountants to act as auditors and liquidators. In 1870 an association of accountants was founded in Liverpool, and other associations quickly followed. These associations represented reputable practitioners; but we hear at this time of many persons styling themselves accountants who carried on a practice of a very doubtful character, and thus made it apparent that some form of professional regulation was required. In 1878 two out of the five associations then existing decided to limit membership to persons who had passed an examination; and later in the same year all five English societies agreed to promote a bill in Parliament to close the profession. The government were sympathetic and promised support. Opposition, however, threatened from the Lords; so, acting upon the suggestion

¹ *Charter of the Society of Accountants in Edinburgh*, 1854.

of a member of the government, the promoters decided to petition for a charter instead. This was granted in 1880, and all five societies became merged in the Institute of Chartered Accountants in England and Wales. To enable the Institute to deal with abuses, a number of 'Fundamental Rules' of conduct were embodied in the charter, and wide powers of expulsion were given. The charter also laid down the qualifications for entry which were closely modelled on those then governing admission to the roll of solicitors. Unlike the Scottish Chartered Accountants the members of the English Institute were divided into two grades, fellows and associates, and they were given the right to use the initials 'F.C.A.' or 'A.C.A.' as the case might be.¹ No specific title was granted; but from the start members adopted the Scottish designation of 'Chartered Accountant', as it may be inferred from the Institute's own title they were intended to do.

With the incorporation in 1888 of the Institute of Chartered Accountants in Ireland, there was completed a form of organization co-extensive with the three kingdoms and now embracing roughly 13,000 practitioners.² There are variations in detail, but in general the English, Scottish, and Irish chartered bodies stand for the same high standard of qualifications and integrity. In Scotland the pre-eminence of the Chartered Accountant has never been seriously challenged; in England, on the other hand, the incorporation of the Institute was to mark the beginning rather than the end of domestic difficulties. Although its doors were open to all who were in practice during the years immediately preceding the grant of the charter, a considerable number of accountants elected to remain outside, while others, embarking on a professional career after the door had been closed, lacked the resources or the ability necessary to qualify for membership. The result was the formation in 1885 of a new body, the Society of Accountants and Auditors as it was then called. This society, shortly after its incorporation, recommended its members to describe themselves as 'Incorporated Accountants'. In course of time examinations were set up, and evidence of practical training came to be demanded as in the case of the older body. In 1907 legal protection was secured for the title 'Incorporated Accountant',³ and in the following year the Society changed its name to that by which it is now known: the Society of Incorporated Accountants and Auditors.

The domestic problem occasioned by the appearance of the

¹ English Chartered Accountants never use the Scottish initial letters 'C.A.'

² The English Institute has between 9,000 and 10,000 qualified members.

³ In the case of *The Society of Accountants and Auditors v. Goodway and the London Association of Accountants*, [1907] 1 Ch. 489.

Incorporated Society with some 5,000 qualified members alongside the chartered bodies has been solved by the virtual assimilation of their standards; and it is usual to-day to regard the 18,000 Chartered and Incorporated Accountants as possessing substantially equivalent qualifications. The only distinction of importance that remains is that in the case of the Society articles, though usual, are not obligatory. Long experience as an assistant to a practising accountant, or as an accountant in the civil or local government service, or in the audit department of the Co-operative Wholesale Society, is accepted in lieu of articles. The seniority of the Institute and the familiarity of the public with the distinctive title of its members gives the Chartered Accountant a prestige which admittedly the Incorporated Accountant does not share; and among auditorships and other professional appointments it is the Chartered Accountant who secures the plums. This is strikingly illustrated from some figures put before the Board of Trade Committee in 1930. Out of the 100,000 public and private companies, now registered under the Companies Acts, there are roughly 5,500 whose shares are officially dealt in on the London Stock Exchange. Of this number, 90 per cent. are audited by firms all the partners of which are Chartered Accountants, 3 per cent. by firms all the partners of which are Incorporated Accountants, and 3 per cent. by firms all the partners of which are either Chartered or Incorporated Accountants.¹ Nevertheless the substantial equality of status of the Institute and the Society is now recognized on both sides. 'I think we have all reached the stage', said the President of the Institute addressing the annual meeting in 1921, 'that we feel we must run in double harness.'²

In 1905 the London Association of Accountants was founded, to provide an organization for those who belonged neither to the Institute nor to the Society. Its present membership is 2,900.³ For many years practising accountants were admitted without examination; but since the War the London Association has embarked upon a more forward policy, and it now aspires to rank with the Institute and the Society. Examinations have been made compulsory, and it is claimed that the standard set is comparable with that demanded by the two older bodies; while the Association has recently been accorded a measure of public recognition.⁴ The same recognition has also been extended to an older but smaller

¹ See Departmental Committee on the Registration of Accountants (1930), *Minutes of Evidence*, p. 22, where the actual figures are set out.

² *The Accountant*, vol. lxiv (1921), p. 575.

³ Departmental Committee, *Report* (1930), Cmd. 3645, p. 4.

⁴ See below, p. 216.

body—the Corporation of Accountants.¹ This, however, does not complete the story. No fewer than ten other associations were deemed of sufficient consequence to be heard in evidence before the Board of Trade committee; and while we cannot stop to give a detailed account of each of these bodies, the spectacle of a single profession organized in such a bewildering multiplicity of associations clearly calls for explanation.

Some of them represent a special type of employment or a special application of the technique, and we have become familiar with associations of this character among the engineers. The increasing size of the business unit, the experience of Government trading during the War, and the difficulties of the post-War period, have led to a better appreciation of the value of scientific accounting for purposes of internal management; and the result has been a great increase in the accounting staffs of every kind of trading concern, both public and private. The Institute of Company Accountants caters for the salaried employees of private corporations, and the Institute of Municipal Treasurers and Accountants—an important body of which we shall have more to say hereafter²—for ‘persons holding whole-time appointments in the finance department of a local authority’.³ The Institute of Cost and Works Accountants, as its name suggests, represents a special application of the technique. But apart from associations representing a special type of employment or a special application of the technique, there are others representing accountants in independent practice, which have already set out on the path successively trodden by the Chartered Institute, the Incorporated Society, the London Association, and the Corporation of Accountants. It is the multiplicity of competing associations of independent practitioners which is the distinctive feature of the accountancy profession. Several factors have contributed to bring this about. The growing appreciation of the value of proper accounting has led an increasing number of traders to send their books to an accountant to be made up at the end of the year; while the heavy increase in direct taxation has proved an added inducement to better account keeping. Of these new clients many are in a comparatively small way of business, and they are alarmed at the fees they believe they will have to pay if they consult Chartered or Incorporated Accountants. They thus create a steady demand for the semi-qualified man. This factor has not been so important as certain statutes and administrative

¹ Founded 1891, present membership some 2,000; Departmental Committee, *Report*, loc. cit. ² See below, p. 249.

³ Departmental Committee on the Registration of Accountants (1930), *Minutes of Evidence*, p. 153.

regulations which have proved a direct incentive to the multiplication of professional bodies. The Revenue Act of 1903 provided in effect that in an appeal before the General or Special Commissioners a tax-payer might be represented by a barrister, solicitor, or accountant; and subsequent Acts have reproduced this provision. For the purpose of these Acts an accountant is defined as a person who has been admitted a member of 'an incorporated society of accountants'.¹ When this definition was first drafted it seems to have been anticipated that the effect would be to confine the privilege of appearing before the Commissioners to Chartered and Incorporated Accountants. It cannot in fact be made to bear this interpretation; and it has probably been the most important single factor in bringing about the formation between 1903 and the present day of seven new associations of accountants in general practice.

The provisions of the Income Tax Acts sufficiently explain the growth of new associations, but not their anxiety to raise their examination standards to an equality with those of the older bodies. This must be put down to the administrative regulations governing the audit of certain institutions. These institutions are not free like a joint-stock company to appoint whom they choose to audit their accounts; and in the absence of a statutory register of accountants it has been necessary to reserve the audit function either to the members of particular associations or to those whose names are on a panel set up by the department concerned. There results a scramble among the associations either for direct recognition or for the admission of their members to the panel. To audit the accounts of friendly societies, collecting societies, and industrial and provident societies,² the Treasury has set up a panel of 'Public Auditors' from among whom the society must select its auditor. Appointment to the panel rests with the Treasury; but the Treasury has an understanding with the Chief Registrar of Friendly Societies whereby the latter is in practice responsible for laying down the qualifications for admission. Prior to 1920 no general principle was observed in making appointments; but in that year the Treasury, at the instance of the Chief Registrar, made a regulation confining future appointments to Chartered and Incorporated Accountants. This step was immediately challenged; and Mr. Bald-

¹ 8 & 9 Geo. V, c. 40, s. 137 (3) (c).

² A friendly society, which is not also a collecting society, and which has taken express power in its rules to do so, may appoint any two or more persons as auditors; see Departmental Committee on the Registration of Accountants (1930), *Minutes of Evidence*, pp. 193 and 194, where the requirements in respect of each of these types of society are set out in full.

win, then Financial Secretary to the Treasury, had to explain in the House of Commons, in justification of the action taken, that during the years 1916-19 five members of the London Association had had to be removed from the panel for unsatisfactory audit work.¹ But this did not quiet the agitation, and the new rule has given the Chief Registrar much trouble, 'inasmuch as applications for recognition have continually been made since 1920 by associations which were not then recognized. Representations by deputation and otherwise have been made to the Prime Ministers, Chancellors of the Exchequer and other Ministers of the successive Governments, and the position has become increasingly embarrassing'.²

In local government the professional audit of accounts has not for the most part been adopted. The audit forms part of the system of control whereby the central government exercises supervision over the activities of local authorities. County councils, local education authorities, urban and rural district councils, and parish councils submit their accounts to an official known as a district auditor, who is appointed by the Minister of Health and is generally a member of the staff of the Ministry.³ In 1903 a select committee of both Houses of Parliament reported unfavourably to this system and recommended the appointment of Chartered or Incorporated Accountants; but the existing system was not disturbed. Municipal corporations, however, had never been within it. The Municipal Corporations Act of 1835 had provided for the election by the rate-payers of two of their own number as auditors; but this lay audit did not give satisfactory results, and towards the end of the last century municipal corporations began to seek powers to appoint professional auditors. When such powers were sought it became the practice to require appointments to be made from among Chartered or Incorporated Accountants; and in 1914 this practice was embodied in a formal ruling by the Local Legislation Committee of the House of Commons. The policy of the Local Legislation Committee in this matter has been as hotly contested as the Treasury decision of 1920 in regard to 'Public Auditors'. On every important bill promoted by a municipal

¹ See *The Accountant*, vol. lxiii (1920), p. 488.

² Departmental Committee on the Registration of Accountants (1930), *Minutes of Evidence*, p. 194.

³ He may incidentally have professional qualifications. Thus the National Insurance Audit Department which conducts a departmental audit of the accounts of insurance committees and approved societies included, at the time of the Royal Commission on National Health Insurance, ninety-nine Chartered and Incorporated Accountants. See *Report of the Royal Commission on National Health Insurance*, 1928 (signed Feb. 22nd, 1926), p. 272.

corporation petitions have been lodged by one or other of the excluded associations and strenuously opposed by the Institute and the Society. Counsel have been heard on both sides and heavy costs incurred. In 1920 the then Chairman of the Committee found it necessary to define more precisely the principles governing its policy. The existing ruling, he said, was to stand only 'until such time as some other body can prove to us that they ought properly to be added'.¹ With the hope thus held out to them the smaller bodies tightened up their examination requirements and redoubled their efforts. In 1930 the London Association saw its ambition fulfilled, and a year later the Corporation of Accountants was also added to the list. The Committee, meantime, feeling the increasing difficulty of their position, had been forced to advocate statutory registration as the only possible means of escape. 'We consider', said the chairman, 'the time is opportune for establishing a register of properly qualified persons, on the lines of the law and the medical service, and we suggest to the accounting world that they should seriously consider the matter of the register, the training and the qualifications, as the committee feel that all qualified persons should have the opportunity of giving public service.'²

This was not the first that had been heard of registration in this profession. Several bills were promoted during the 'nineties of the last century under the auspices of the chartered societies. None, however, made any very considerable progress, since admission to the proposed register was to be denied to persons who were not members of one of the promoting associations. In 1911 the chartered and incorporated bodies agreed upon the terms of a more widely-drawn bill which was to bring in all persons then in actual practice. A fair measure of support was secured outside the profession, and the bill passed successfully through the Lords and was accorded facilities in the Commons by the Government of the day. Then opposition developed in an unexpected quarter; delay ensued, and the bill was crowded out.

After the War the matter was again discussed. The smaller bodies were in favour of registration provided that they were included, as the effect would obviously be to increase their standing and the standing of their members. The Incorporated Society took the view that, although registration would probably tend to obscure existing distinctions of qualification within the profession, yet the long-run advantages were worth purchasing, if necessary

¹ Departmental Committee on the Registration of Accounts (1930), *Minutes of Evidence*, p. 14.

² Quoted *ibid.*, p. 27.

at the cost of some sacrifice on the part of the older bodies. Undoubtedly the problem had assumed a more difficult aspect in the intervening years. The increase in the number of practising accountants, particularly of 'income-tax experts', not attached to one of the premier associations, was very large; and the Institute, supported by the Scottish chartered societies, held that the most probable outcome would be a levelling down rather than a levelling up. 'They had come', Sir Basil Mayhew told the members of the Institute,¹ 'into a goodly heritage, and it was their duty to cherish that position for themselves and for their successors.' 'Any form of registration', said the President,² 'would be nothing more than a serious watering of their goodwill.' Accordingly the chartered bodies refused to be party to any scheme; and so long as they held aloof, no action on the part of the profession was possible.³

Public attention was drawn to the question by the pronouncement of the Local Legislation Committee quoted above; and in February 1930 the Board of Trade appointed a committee to consider and report whether it would be desirable to 'restrict the practice of the profession of accountancy' to persons named in a register. The minute appointing the Committee was not happily worded.⁴ It was easy to show that 'the practice of the profession of accountancy' was something which could not be defined. The witnesses who appeared on behalf of the chartered bodies were unanimous in their opposition to any scheme that could be suggested; and the committee, deeply impressed with the difficulties in the way, reported unfavourably to registration. This we think was a misfortune. The Chief Registrar of Friendly Societies stated in evidence that his department was 'in favour of the establishment of a register of accountants, . . . even should the standard adopted be lower, during the transition period, than the standard of the present List of Public Auditors'.⁵ The Chief Inspector of Taxes was more concerned with the difficulties of the transition period; and he stated that 'the introduction of a Register of Accountants would not be likely to help the Inland Revenue Department unless registration carried with it an assurance of competence and reliability.'⁶ The transition period admittedly presents difficulties, though a number of those which most alarmed the Committee

¹ See *The Accountant*, vol. lxx (1924), p. 777.

² Reported in *The Times*, Oct. 12th, 1928.

³ The Corporation of Accountants considered promoting a bill; but it was never introduced into Parliament.

⁴ See *Report of the Departmental Committee on the Registration of Accountants* (1930), Cmd. 3645, p. 2.

⁵ Departmental Committee on the Registration of Accountants (1930), *Minutes of Evidence*, p. 194.

⁶ *Ibid.*, p. 190.

and the witnesses seem to have been of their own making. Provision could be made authorizing the Chief Registrar of Friendly Societies or any other department concerned to limit the performance of any function, during the transition period, to certain classes only among 'registered accountants'. At the same time the objections of the chartered bodies could be met by empowering the authority set up to administer the Act to recognize other examinations besides its own. Thus the existing societies with their traditions and their distinctive titles would be as effectively preserved in the general scheme as the Royal Colleges of Physicians and Surgeons were preserved under the Medical Act of 1858. The general case for registration we think was clearly made out. If the State is to confer privileges of this kind, which appears in the accountancy profession to have become settled policy, it must assume responsibility for the qualifications of those upon whom they are conferred. The case, however, is for the reservation of a number of specified functions to registered persons, not, as the committee seemed to suppose, for restriction of the entire 'practice of accountancy'. The specified functions could always be added to if it seemed desirable; and the scheme would thus have the added advantage of facilitating certain reforms in company law which have been much canvassed of late. During the public discussion which followed the failure of Farrow's Bank, proposals were made for setting up a special panel of bank auditors. 'In all the cases of fraudulent bank failures', said Leaf,¹ 'it will be found that the auditor employed to certify the balance sheet has been either the creature of the responsible manager or a principal in the fraud.' The suggestion at that time was apparently that the Board of Trade should select from among Chartered and Incorporated Accountants such persons as it thought fit, and that those persons should constitute the panel. This suggestion did not commend itself to the profession, by whom it was felt it would create a kind of 'super-qualification';² and in the end it was dropped. It reappeared, however, in a somewhat different shape in the report of the Liberal industrial inquiry. The panel was abandoned; but it was urged that the Institute and the Society should be amalgamated, and every public company be required to appoint auditors from among the members of the united body.³ Clearly, however, once a register was in being, banking companies, public companies, and other institutions could at any time be added

¹ W. Leaf, *Banking* (1926), p. 232.

² See *The Accountant*, vol. lxiv (1921), p. 661.

³ *Britain's Industrial Future* (1928), p. 89.

to the list of bodies required to appoint 'registered accountants' as auditors, without the fear that statutory privileges were being conferred upon voluntary associations, and without creating the kind of 'super-qualification' to which professional opinion is opposed.

The Profession

The part played by the accountant in the economic life of this country has become one of great importance. Reference has been made to the increase in the number of salaried accountants in business, and we need not enlarge further upon this development; though it is of interest to note that there is a considerable demand for Chartered and Incorporated Accountants to fill these positions,¹ and that a Chartered Accountant's training is claimed as 'a valuable equipment for almost any business career'.² It is in the function of the accountant in public practice, however, that the most striking development has taken place. He has become what has been happily described as the medical consultant of industry.³ Nor is his part confined to the giving of a mere annual certificate of health. 'The control which the auditors of a bank exercise over its policy', said Leaf, 'is very real'.⁴ 'The character of our work has changed', said the President of the Institute, reviewing the period which had elapsed between 1880 and 1921. 'The auditor has become the adviser and expert whose assistance is eagerly requested. On questions of financial policy, on the raising of capital, on distribution of profits, on costing, and so forth, his advice is deemed to be essential, and further, in organization generally, his help has been sought and valued. In many a business, proper statistical records, intelligently applied, have led from difficulty and approaching disaster to smooth working and substantial success.'⁵ In company reconstruction and reorganization there is the same tendency to rely upon the accountant, though the problems to be solved may extend far beyond mere questions of accounting.

¹ Thus in 1923 it was reported of a Scottish iron manufacturing company that, out of a total office staff of some forty-five (excluding typists), no less than seven were fully qualified Chartered Accountants. See *The Accountant*, vol. lxxviii (1923), p. 710.

² See the remarks of the President of the Institute reported *ibid.*, vol. lxx (1921), p. 543.

³ 'They are almost business doctors, are they not?—That is an expression I have seen used.' See the examination of Sir William (now Lord) Plender before the Departmental Committee in 1930, *Minutes of Evidence*, p. 8.

⁴ W. Leaf, *op.cit.*, p. 233.

⁵ *The Accountant*, vol. lxxv (1921), p. 545.

'In practically every case the trouble goes much deeper than capital and finance. The wider and more complex issues of the general policy of the business, the scope of its operations, the soundness of its equipment and organisation, the efficiency and harmonious working of its management and staff, the advantages or handicaps which it has as buyer, producer, and seller—all these must be reviewed before even the nature of the scheme can be determined. The first essential is a complete survey of the history, the present position, and the prospects of the undertaking as an economic unit. . . . Bearing in mind the diversity of problems which may have to be solved—financial, technical, psychological, and economic—it is a significant fact that there is a clear tendency to offer to the accountant the task of welding together the complete scheme of reorganization, of which the purely financial adjustments may form only a small, and far from the most important, section.'¹

The accountant is also consulted by the legislature and government departments; and 'very few inquiries into matters affecting the industrial and economic welfare of the country are conducted without a representative of the profession'.²

From relying upon the accountant as medical adviser and consultant, the business world has taken a step further and now seeks his aid in direction and management itself. This tendency is exemplified in the appointment of a Chartered Accountant to succeed Lord Leverhulme as chairman of Lever Bros. Again, in the first fortnight of October 1927, we are told, 'nine Public Company Prospectuses appeared in *The Times* and in five of these Chartered Accountants had seats on the Board';³ while a past President of the Incorporated Accountants, giving evidence before the Board of Trade committee in 1930, referred to the 'large group of companies' of which he was then the chairman.⁴

This most recent development, which has little parallel among engineers and chemists, suggests the possibility of changes in business organization so far reaching that it would be premature to discuss them at this point; but the part played by the accountant as auditor and business consultant raises important questions which must be answered now. In particular we must ask if the accountant's professional ethics are adequate to his responsibilities, and if his education is such as to fit him for the varied and highly

¹ From an article contributed to *The Accountant*, vol. lxxvi (1927), p. 985. 'Thus although the recent reconstruction of the Marconi Company', the writer points out, 'was officially the result of the labours of a committee, it will be remembered that the scheme was generally referred to (in the Press and otherwise) as "the Garnsey scheme".' Sir Gilbert Garnsey was the accountant member of the Committee.

² *Ibid.*, vol. lxxiv (1926), p. 1.

³ *The Times City Supplement*, Nov. 8th, 1927.

⁴ Departmental Committee on the Registration of Accountants, Evidence of Sir James Martin, *Minutes of Evidence* (1930), p. 31.

skilled duties which he is called upon to perform. It will also be legitimate to inquire whether his contribution to the study of the business operations with which he is brought into contact has been as extensive as his opportunities permit and the importance of the subject demands.

The position of the company auditor is one of peculiar delicacy, for though he is appointed as the 'watchdog' of the shareholders, he must yet work in close and constant co-operation with the board. It is essential, therefore, that, where the interests of the shareholders demand it, he should feel himself able to resist pressure that may be brought to bear upon him, in regard either to the form of his certificate or to the manner in which the accounts are presented. Accordingly it has become part of the unwritten code of the profession that an auditor who is unable to agree with his directors upon a point of principle is under a duty to resign.¹ Moreover, an auditor who is driven to this step must be protected; and therefore 'an accountant, before accepting a position previously held by some other professional accountant, should if possible ascertain from the latter the reasons why a change of accountants is being sought, and satisfy himself that the circumstances are not such as to make it improper for him to accept the appointment that is offered to him'.²

Despite these clear indications of professional opinion, however, it is possible that the extreme step of resignation is not taken so often as it should be, and there is undoubtedly evidence of uneasiness among the investing public and dissatisfaction with the interpretation of the auditor's function generally accepted in the accountancy profession. In large part this would seem to be due to a misreading of the legal duties of the auditor. At the time when English company law assumed the form which, in essentials, it still retains, the typical company was a small concern, whose shareholders were drawn from a narrow circle and were more or less known to one another personally or by reputation. It was assumed that they would be in a position to assure themselves of the business ability of those whom they elected as directors, and

¹ It is recorded of the late Sir Arthur Whinney that 'few accountants have done more than Sir Arthur to raise the standard of the auditor and to place him at the high level he occupies to-day. In his early years he was rigid on points of principle, and his firm sacrificed more than one position as company auditors by insisting on disclosing in their certificates facts which it was essential the proprietors should know, but which the directors did not wish attention drawn to'; see an obituary notice in the *Financial Times* quoted *The Accountant*, vol. lxxv (1927), p. 965.

² *The Etiquette of the Accountancy Profession*, by a Chartered Accountant (1927), p. 37.

to make changes in the composition of the board where necessary. Consequently the auditor's certificate was directed primarily to the legal aspect of the company's finances. In the words of Lord Justice Lindley: 'It is no part of an auditor's duty to give advice either to directors or shareholders as to what they ought to do. . . . It is nothing to him whether the business of a company is being conducted prudently or imprudently, profitably, or unprofitably. . . . His business is to state the true financial position of the company at the time of the audit and his duty is confined to that.'¹ In recent years the increasing size of the typical company, and the increasing application of accounting methods to trading operations have profoundly affected both the relations between the shareholders and the board, and the actual, if not the legal, relations between the board and the auditors. Nevertheless the law has remained in all important respects unchanged. The 1929 Companies Act provided for the inclusion of a profit and loss account in the balance sheet; but gave no guidance as to what the account should show. The judgement of Lord Justice Lindley remained unreversed, and auditors have therefore been led to assume that 'the account is intended simply to show shareholders that the amount intended to be distributed as dividend is within the limits from the legal point of view. . . . The responsibility for the prudence or imprudence of distributing the items has been regarded as exclusively within the province of the directors.'² In 1931 the prosecution of the auditor of the Royal Mail Steam Packet Co., though unsuccessful, revealed a decided opinion on the part of the public that the current conception of the auditor's function is not enough; and there is demanded, 'if not an exact statement of the results of current trading, yet an assurance that the results disclosed by the accounts of the year are not widely different from those accruing from the ordinary trading processes of the year'.³ It is believed that in the past many auditors have pressed as strongly as they have felt they could for greater publicity. It is possible that they could have thrown their weight more decidedly in that direction; but in face of judicial interpretations of their function so unambiguous as that quoted above, their hands were clearly tied. It may be hoped that, with an equally unambiguous expression of popular opinion in an opposite sense, they will in future find their hands greatly strengthened, and the wording of recent certificates suggests that these hopes are likely to be fulfilled. At the same time we are strongly of opinion that, if the public wants

¹ Quoted *The Accountant*, vol. lxxxv (1931), p. 195.

² Ibid.

³ Ibid.

fuller publicity of trading results, it should relieve the auditor of all uncertainty as to its desires by securing their embodiment in legislative form.

We have considered the accountant's duty to his actual shareholders. He also has a duty to prospective and potential shareholders. Among the suspensions and expulsions from the Institute that are from time to time recorded in the pages of the *Accountant*, we find more than once that the offence has been that of 'having given to the directors of a limited company, for use in a prospectus inviting subscriptions, a certificate giving an estimate of future profits, in circumstances calculated to bring the profession into disrepute'.¹ The gist of this offence is explained in the following terms:

'The training . . . and the experience of a Chartered Accountant . . . do not equip him to foretell the future. . . . But there can be no doubt that an estimate of future profits subscribed to by a Chartered Accountant would attract far more attention than a similar estimate made by the promoter of the company, and it is for this reason that a certain class of promoter is willing to pay for estimates of this description. He can afford to pay for them because they produce applications for shares. The practice is accordingly wholly indefensible in that it borders upon a fraud.'²

'The present system of education', writes a Chartered Accountant of some standing, 'is far from satisfactory.'³ In its general lines it was settled by the chartered bodies in the last century—five years' articulated pupilage⁴ with a practising Chartered Accountant, and examinations. In the Incorporated Society the requirements are similar except that the practical experience may be obtained in other ways besides articulated pupilage. The profession has been organized for many years in provincial societies of Chartered and Incorporated Accountants, with a parallel organization of students' societies, which are responsible for the conduct of classes and lectures. In the Incorporated Society every student must belong to a students' society, but attendance at the lectures is optional; while in the Chartered Institute neither membership of a society nor attendance at lectures is enforced. The universities play no part in the scheme,⁵ except that graduates are exempted from two years' articles; and the dearth of proper places of instruction makes

¹ See for instance *ibid.*, vol. lxxiii (1925), p. 584.

² *The Etiquette of the Accountancy Profession*, by a Chartered Accountant (1927), p. 45. There is not of course any objection to an accountant submitting a forecast to the management of a company for internal use.

³ *The Accountant*, vol. lxxvi (1927), p. 31.

⁴ In Scotland known as 'indentured apprenticeship'.

⁵ Except in Scotland, see below, p. 225.

the accountancy profession the happy hunting-ground of coaching institutions. Of these some are conducted under the auspices of the students' societies, and a few by local education authorities; but the great majority are purely private venture establishments.

The present system has not gone unquestioned by members of the profession. Immediately before and after the War criticism was directed chiefly to the examination syllabus. The syllabus dated from a period when bankruptcy and liquidation formed perhaps the most important part of an accountancy practice; legal subjects were very prominent and economics was not included. Reform came first in Scotland, and for many years now economics and statistics have figured in the syllabus of the General Examining Board. In 1920 the Incorporated Society also found room for economics, statistics, and costing, and shortly afterwards the English Institute announced that an optional paper on economics would be introduced into their scheme; there is still no paper on statistics in the Institute syllabus. But not only is it complained that subjects are omitted which ought to be included, it is also alleged that the subjects which are included are too narrowly and empirically interpreted. It is said that candidates are expected to answer questions on partnership law without being required to know anything of the law of agency of which it is an offshoot, or of the law of contract of which the law of agency itself is an offshoot.¹ We do not know how much weight is to be attached to particular criticisms of this kind; but having in view the place which the accountant is now called upon to fill, the volume of dissatisfaction that has been expressed suggests forcibly that reform of the syllabus could be carried further with advantage.

More recently criticism has been directed towards the pupilage and coaching systems, which, it is alleged, fail to give the necessary training. Many critics have urged the Institute to give the students' societies more generous financial support and to make them effective teaching institutions for the profession.² Unfavourable comparisons have been drawn between this country and the Province of Ontario, where every candidate for membership of the Ontario Institute goes through a course at Queen's University during his articles. If he does not take the course he is not eligible to sit for the examinations. 'Results', it is claimed, 'have amply justified this measure. The examiners report a marked improvement.'³ Another critic, addressing an international congress of

¹ See a correspondent in *The Accountant*, vol. lxxiv (1926), p. 241.

² See for instance *ibid.*, p. 291.

³ *Ibid.*, p. 356.

accountants in Amsterdam in 1926, strongly urged that the students' societies should be directly controlled by the Institute, that membership should be compulsory, and that students should be periodically examined, independently of the Institute examinations, in order to test their progress.¹ 'This', said the *Accountant* commenting on the proposed periodic examinations, 'seems to us an excellent and highly practical suggestion. The existing centralized system of examination invites all the evils of cramming.'² As a matter of fact the suggested reform has already been realized in Scotland, where the students' societies of Glasgow and Edinburgh 'have for many years arranged for Test Examinations, which are held twice a year and have proved of much value to the students'.³

The *Accountant*, however, was prepared to go one step further:⁴ 'Under American practice the State Universities regulate the practice of professions. That arrangement is never likely to become the rule in this country. But just as the British Universities are the nurseries of the Bar and of medicine, so might their organization be turned to account in the preliminary training of embryo accountants. . . . Cannot some arrangement be made between the Institute and Society on the one hand and the Universities on the other for the elaboration of a mutually satisfactory curriculum?' This view was strongly endorsed by correspondents; but no move has been made by those who are responsible for the government of the profession in England. Degrees in commerce have been set up in certain English universities, but it does not appear that either the Chartered Institute or the Incorporated Society has given them any active encouragement. Moreover the privilege of exemption from two years' articles, which might be employed as an inducement to university students to take subjects specially appropriate to the profession, is in fact extended to all university graduates alike. In Scotland it is otherwise. For many years every apprentice has been required to attend university classes in law; while shortly after the War the Scottish universities were led to inaugurate classes in accounting and business method, and attendance at these also was made compulsory as soon as they were set up.

It is difficult to avoid the inference that the want of proper facilities for theoretical training is in part responsible for the scanty interest displayed by accountants in the study of their craft. One of the advocates of educational reform from whom we

¹ Ibid., vol. lxxv (1926), pp. 131 foll.

² Ibid., p. 118.

³ *Accountancy*, Choice of Career Series, no. 6 (1929), p. 12.

⁴ Vol. lxxv (1926), p. 161.

have already quoted would extend his proposals to cover a wider field. 'There is a real need', he urges,¹ in accountancy, 'for sustained academic study and research. . . . But so far as I am aware, the Institute and the Society have not directly concerned themselves with the academic study of accountancy or research work.' This criticism was not misplaced. It is a remarkable fact that there is in the world of accountancy, almost alone among the professions, no association having any study interests or activities. Attention does not seem to have been directed to this point until after the War; but in September 1921, in an address to the Incorporated Society, Sir Josiah Stamp made 'this serious indictment of accountants'.² 'Scientific accountancy', he said, 'has now been developing for some fifty years, but I cannot trace that it has yet made a single substantial contribution to economic science over its own field of the analysis of the results of industry, although it has practically a monopoly grip of the required data.'

The reproach fell largely upon deaf ears; while those whose interest was aroused expressed the fear that accountants could not contribute in this fashion to the data of economic science without breach of their duty of secrecy to their clients. Four years later Sir Josiah returned to the attack. He proposed to get over the confidence difficulty by drawing his information from groups of firms, by whom figures would be submitted to accountants, and thence passed on to economists. 'It . . . is an actuality', he said, 'in America. There are there a number of businesses—150 in one industry—giving to a neutral source, accountants and economists, particulars of their businesses in order that an aggregate statement of accounts may be obtained, giving the fluctuations of turnover, fluctuation in price level, and other details.'³ Sir Arthur Lowes Dickinson, speaking at the autumn conference of the Institute in 1926, looked even further ahead, to the day when prices would be regulated in accordance with certified and published costs of production, plus a reasonable profit. 'We wish', commented the *Accountant*, 'that those who discussed this address at Bristol had not appeared to turn down the idea, because it seemed to them vaguely allied to "socialism". . . . We believe that, ultimately, the profession will have to throw its weight upon the side of much greater collective publicity of the results of industry.'⁴

However, despite this powerful pleading nothing has yet been done by the profession in the way of organized study or research.

¹ *The Accountant*, vol. lxxvi (1927), p. 31.

² Quoted *ibid.*, vol. lxxv (1921), p. 505.

³ *Ibid.*, vol. lxxiii (1925), p. 686.

⁴ *Ibid.*, vol. lxxv (1926), p. 594.

It is one of the 'objects' of the American Association of Accountants 'to advance the science of accountancy';¹ but in England

'the profession has no organization to deal with these matters. . . . No doubt there are numbers of accountants . . . who would be willing to take an active part in research of this nature, and it seems, therefore, what is most needed is . . . an organization to collate these efforts. Why not a Scientific Research Committee? The constitution of such a committee could be arranged by the Council [of the Institute] so as not to interfere with any of its primary functions. . . . Such a committee could standardize and direct research, analyse and draw conclusions from the facts collected, publish information of use to the profession so that in economic and national problems the accountancy profession would be able to speak with as great authority as bankers or any other body.'²

ACTUARIES

THE *actuarius* was the officer whose duty it was to record the *acta* or deeds, that is to keep the minutes, of the Roman Senate. In the Middle Ages the term was loosely applied to any one who did secretarial work, and as late as the early years of the eighteenth century it was still unspecialized. But when the 'Equitable', the first life assurance undertaking in this country to conduct its business on strict mathematical principles, was founded in 1762, its chief officer was given the title of 'actuary'; and it is to this slight chance that the title of the profession is due.

Historically the life office was evolved out of the friendly society, which is a very old device, reported to have been known in ancient Greece, for providing, out of small weekly contributions, funds wherewith to insure the contributors against sickness, accident, and old age. Institutions of this type are said to have been traced in Scotland as far back as the sixteenth century. In the succeeding centuries they increased rapidly in popularity, at the same time giving birth, first to the widows' fund, and then to the life office proper, assuring the lives of its policy-holders for the benefit of their estate, whether they left dependents or not. The computation of premiums was in early times a matter of guesswork, and it is said that in Scotland the solution of such mathematical problems as were recognized was frequently entrusted to a minister of the

¹ Ibid., vol. lxxiii (1925), p. 845.

² Ibid., pp. 823 and 824.

Church.¹ The modern technique dates from the eighteenth century, when life statistics first began to engage the attention of mathematicians, and in particular from the foundation of the Equitable in 1762 already referred to.² With the increase of wealth and the widening of the field of investment, which accompanied the industrial revolution, other offices came into existence; and by the end of the succeeding half century the skilled mathematicians whom they employed had become generally known as 'actuaries', and were recognized as a profession; as is apparent from the wording of the Benefit Societies Act of 1819, which provided that the tables and rules of friendly societies should be approved by 'two persons at the least known to be professional actuaries or persons skilled in calculation'.³

Organization did not come until the middle of the nineteenth century, when, in 1848, it was decided to form an association which became known as the Institute of Actuaries.⁴ In the charter which it was later to receive it is recited that the Institute

'was established for the objects following, that is to say: (a) For the purpose of elevating the attainments and status and promoting the general efficiency of all who are engaged in occupations connected with the pursuits of an Actuary. (b) For the extension and improvement of the data and methods of the science which has its origin in the application of the doctrine of probabilities to the affairs of life and from which life assurance annuity reversionary-interest and other analogous institutions, including friendly societies, derive their principles of operation. (c) The consideration of all monetary questions involving separately or in combination the mathematical doctrine of probabilities and the principles of interest.'⁵

A number of actuaries, however, were not in agreement with the objects which the majority had in view. They desired to see a body concerning itself solely with the 'data' and the 'science' and not with 'attainments' or 'status'. On these grounds they decided not to come into the Institute, and in the same year formed a rival body, the Actuaries' Club. In 1855 the Institute was further weakened by the secession of all its Scottish members who, in the following year (1856), founded the Faculty of Actuaries with head-quarters in Edinburgh. But the same division of opinion

¹ Richard Price, D.D. (1723-91), who was consultant to the Equitable in its early days, was a Unitarian minister.

² Halley the astronomer (1656-1742) is stated (*D.N.B.*) to have been the 'virtual originator of the science of life statistics'.

³ 59 Geo. III, c. 128, s. 2.

⁴ It seems that an association of managers of life assurance companies had been in existence in Edinburgh for some years' previously; see the *Institute of Actuaries Year Book, 1931-2*, p. 3.

⁵ *Charter of the Institute of Actuaries, 1884*, preamble.

was found in the ranks of the Scottish actuaries; and in 1859 the minority, who held that a professional association should be limited to scientific and study interests, with the addition of education, but to the exclusion of 'status', decided to form the Actuarial Society of Edinburgh. In England the existence of the Actuaries' Club appears to have stood in the way of a charter being granted to the Institute; but in 1884 amalgamation was brought about, and a charter then followed. In Scotland this difficulty was not met with, and the Faculty received a charter in 1868, though the Actuarial Society of Edinburgh continued in independent existence until 1900, when it was absorbed in the Faculty. The Faculty and the Institute have remained distinct; and though amalgamation has been discussed from time to time, the general opinion appears to be that 'the interests of the profession, and of actuarial science, are better served by the existence of both bodies and the maintenance of cordial relations between them'.¹ But while each thus preserves its separate identity, neither possesses any form of provincial organization. To some extent this reflects the organization of life assurance business, which has come to be concentrated in a few large towns, of which London and Edinburgh are perhaps the chief. At the same time there would seem to be advantages in having a single association, with head-quarters in London, but with autonomous branches in the three or four provincial cities where a substantial amount of life assurance business is carried on.

The Scottish charter of 1868 and the English charter of 1884 both provided for compulsory examinations.² In the Faculty there is but one grade of qualified members who are styled fellows ('F.F.A.'); the Institute has two grades, fellows ('F.I.A.') and associates ('A.I.A.'). of which the fellowship represents a higher qualification to be obtained only by undergoing a more severe examination test.⁴ Candidates for admission are not required to have been articulated or to have undergone any practical training of any kind; but they must show a high standard of mathematical ability of a rather specialized order. Indeed, so specialized is the actuary's technique that the examination student is obliged to use the Institute's own text-books, which have been prepared for it

¹ *Journal of the Institute of Actuaries*, vol. lviii (1927), p. 5.

² In the Institute, admission, at all events to the fellowship grade, had been limited to successful examinees for some years prior to the charter being granted; see R.I.B.A., *Transactions*, 1879-80, p. 12.

³ The charter makes provision for associates as well; but under the by-laws now in force every associate is automatically entitled to be elected a fellow.

⁴ It may be contended that the associates are not fully qualified inasmuch as they are not eligible to perform certain statutory functions; see below, p. 231.

by practising members; while for parts of the examination not covered by the text-books he must consult articles contributed to the *Journal* of the Institute and the *Transactions* of the Faculty. Students' societies have been set up; and 'oral tuition in all parts of the examination syllabus is provided at Staple Inn Hall by the official tutors of the Institute'.¹ But 'intending candidates are warned that for success in passing Part I of the examinations a sound knowledge of pure mathematics is essential, while the three subsequent Parts require a high degree of application to study and the expenditure of a considerable amount of time and energy over a period which, in the case of the average examinee, is generally of not less than six years duration'.² The Council of the Institute feel it their duty to bring these considerations to the notice of those contemplating an actuarial career.³

We have seen that the actuaries have largely created the science which it is their function to apply. But this is not all; the data upon which that science is built have themselves been assembled and analysed by the profession. The mortality tables most generally in use among life offices in this country have been prepared by joint committees of the Institute and the Faculty working on experience furnished by the offices. Thus the actuaries are the sole depositaries of their art or 'mystery' to an extent not equalled elsewhere in the professional world; and it is scarcely surprising to find that the Institute and the Faculty have to fear no competition from outside bodies. The actuaries are, indeed, a small profession. The Institute includes but little more than 400 fellows and 300 associates, while there are some 200 fellows of the Faculty. But though few in numbers, they are above the battle, and they have a complete monopoly in their own field as the salaried mathematical advisers to life assurance undertakings.

In the completeness of their monopoly the actuaries differ markedly from the accountants; nevertheless in certain respects their profession affords an interesting parallel to accountancy. There has been the same legal reservation of functions to the members of voluntary associations; indeed, it has been carried to greater lengths. For the protection of its shareholders a limited company is required to submit to an annual audit of its accounts; but a company carrying on life assurance business is required in addition, for the protection of its policy-holders, to submit to a quinquennial valuation of its assets and liabilities. Friendly

¹ *Institute of Actuaries Year Book, 1931-2*, p. 37.

² Success in the first three 'Parts' admits to the associateship. The fourth 'Part' need not be taken except by those who aim at the fellowship.

³ *Institute of Actuaries Year Book, 1931-2*, p. 36.

societies likewise must submit to a quinquennial valuation as well as to an annual audit; and in the case of friendly societies the parallelism is particularly close, inasmuch as the Treasury maintains a panel of 'Public Valuers', analogous to the panel of 'Public Auditors'. In the absence of associations of the semi-qualified, however, the terms of admission to the panel of 'Public Valuers' have presented no difficulties, and in 1931 the panel consisted solely of fellows of the Institute or of the Faculty.¹ But whereas, so far as friendly societies are concerned, the provisions affecting valuation and audit are identical, in the case of life assurance companies on the other hand, though there is the same unrestricted freedom of choice of auditor as in other companies, the quinquennial valuation must be signed by an actuary 'possessing such qualifications as may be prescribed by rules made by the Board of Trade'.² Under the rules now in force the appointments are virtually limited to fellows of the Institute and the Faculty.³ The instances quoted do not exhaust the list of functions which have been legally reserved to actuaries belonging to the Institute or the Faculty by statute or administrative regulation. Thus under the Act which regulates pension schemes in the local government service, any proposed scheme must be submitted to 'an actuary' for report,⁴ while any superannuation fund actually established must be valued by 'an actuary' once in five years.⁵ 'An actuary' is defined to mean a fellow of the Institute or the Faculty.⁶ 'In addition it should be noted that a large number of private Acts dealing with the superannuation schemes of such bodies as local authorities and railway companies contain provisions requiring periodical valuations to be made by a qualified actuary.'⁷

¹ *Institute of Actuaries Year Book, 1931-2*, p. 33.

² 9 Edw. VII, c. 49, ss. 5 (1) and 29.

³ Where 'special circumstances exist' the valuation may be signed by an associate of the Institute, a person who was in 1910 actuary to a life assurance company, or 'such other person having actuarial knowledge as the Board of Trade may, on the application of a company, approve' (*Statutory Rules and Orders* (1910), no. 566). It is believed that this provision was inserted primarily to meet the case of foreign companies carrying on business in this country and desiring to return a valuation signed by a foreign actuary.

For industrial assurance companies the qualifications are laid down by the Industrial Assurance Commissioner, but they are practically identical with those laid down by the Board of Trade for non-industrial companies; see *Industrial Assurance (Deposits, &c.) Rules* (1924), clause 10. This applies also to collecting societies, which, besides any valuation of their other business under the Friendly Societies Act, must submit a five-yearly valuation of their life business under the Industrial Assurance Companies Act.

⁴ 12 & 13 Geo. V, c. 59, s. 2 (a).

⁵ 12 & 13 Geo. V, c. 59, s. 19.

⁶ *Ibid.*, s. 3.

⁷ *Institute of Actuaries Year Book, 1931-2*, p. 27.

It is apparent that the actuary appointed to make the statutory valuation stands between the directors of an assurance company and its policy-holders in a position closely resembling that of the auditor between the directors of any trading company and its shareholders; and furthermore that the relation of each to his directors presents very similar ethical problems. The actuary, like the auditor, must feel himself able to criticize, and where necessary to resist, the policy of the management. In general we think the professional standards observed among actuaries have been fully adequate to these responsibilities. However, criticisms have been heard from time to time, and the Parmoor Committee's report, though its strictures were directed mainly towards administration rather than actuarial policy, drew attention to 'several cases' where the valuation had been found to be 'thoroughly unsatisfactory',¹ a statement which it was felt 'reflected both on the Institute and on the profession'.² In defence it may be urged that, under the law as it then was, the position of the actuary to an industrial company was one of peculiar difficulty, in that its policy-holders are drawn from the least well informed section of the community, so that the directors had not the same reason to fear an unfavourable report, while the actuary 'did not command generally the same authority with his directors or the management as did the actuary in the case of ordinary companies'.³ However, it was stated emphatically by the President of the Institute that 'in any difficulties which might face actuaries in the conduct of their business, . . . in resisting any undue pressure which might be brought to bear upon them, they would be assured of the support of the Institute in any action they might take'.⁴

The resemblances between the accountancy and actuarial professions have been emphasized; attention must now be drawn to a contrast between them which is scarcely less striking. The actuary is a laboratory worker like the chemist. Consequently, though he may advise his office upon such matters as investment policy, he does not come into contact with the everyday business world, and his sphere has remained confined to the closely related problems of life assurance, sickness insurance, and superannuation. Though trained to consider 'all monetary questions involving separately or in combination the doctrine of probabilities and the principles of interest',⁵ nevertheless his field of activity

¹ *Report of the Departmental Committee on the business of Industrial Assurance Companies and Collecting Societies* (1920), Cmd. 614, p. 6.

² *Journal of the Institute of Actuaries*, vol. lii (1920-1), p. 148.

³ *Ibid.*

⁴ *Ibid.*, pp. 160 and 161.

⁵ See the objects of the Institute, quoted above, p. 228.

has not widened like that of the accountant during a period conspicuous for the growing size of business undertakings and the increasing importance and complexity of the financial aspect of management. He has not become in any sense a general business consultant. Indeed, actuaries are seldom employed even in the fire, accident, marine, and other departments of 'composite' offices,¹ which draw their skilled technicians mainly from the Chartered Insurance Institute.² Elsewhere in the business world the actuary is exposed to the competition of the accountant on one flank and the university trained statistician on the other. If some problem of costs requires elucidation, an accountant will be given the job; if real mathematical or statistical ability is looked for, recourse will be had direct to the universities,³ and the Institute of Actuaries finds itself in the same weak position as the Institute of Chemistry.

The actuaries themselves are alive to the situation, and there has been some discussion of 'the best means of bringing our professional experience as trained statisticians more fully within the knowledge of both the official and the business world'.⁴ Cases are not unknown where the actuary is being consulted already; and an instance is recorded of a member of the Institute who was 'asked to advise in connexion with repair rates for railway trucks, and had applied the principles adopted in sickness experiences to find how many trucks would fall due for repair year by year according to their age'.⁵ At the same time it was lamented that 'with two exceptions none of the numerous statistical branches in the Public Service employs qualified actuaries', which 'affords a close parallel to the state of affairs as regards general statistical work in the business world'.⁶ The council was urged to take steps to bring the qualifications of the actuary before the notice of the public and to foster an 'extension of the scope of the profession in the statistical field'.⁷ But echoes of these discussions came to the ears of the accountancy profession, and the *Accountant* published a leading article deprecating any encroachment by the actuary

¹ See *Journal of the Institute of Actuaries*, vol. lvii (1926), p. 106.

² For the Chartered Insurance Institute see below, p. 280.

³ As for example in the case of the Forestry Commission. Many of the problems of forest management are such as might have been expected to fall exclusively to actuaries.

⁴ See *Journal of the Institute of Actuaries*, vol. lvii (1926), p. 99.

⁵ *Ibid.*, vol. lv (1924), p. 306. And see too a number of instances quoted in the *Accountant*, vol. lxxvi (1927), pp. 587 ff.

⁶ *Journal of the Institute of Actuaries*, vol. lvii (1926), p. 109. So far as the government offices are concerned, it is believed this is no longer a strictly accurate statement of the position.

⁷ *Ibid.*, p. 89.

upon the recognized sphere of the accountant as the financial adviser of industry.¹ 'Life contingencies and matters into which the element of *probability* enters'—these, it was argued, constitute the proper sphere of the actuary. To this it was retorted, not unfairly, that the element of probability does enter into the interpretation of industrial statistics.² At the same time it was suggested that, to avoid rivalry and friction between the two professions, a convention might be agreed between them similar to that observed between solicitors and counsel. Under this convention it would be deemed improper for an actuary to advise upon any financial problem save on the instructions of an accountant.³ In the meantime, however, official explanations had been tendered, and the Vice-President of the Institute 'made it quite clear that there is not the slightest intention on the part of actuaries to encroach upon the domain of accountants'.⁴ Since that time no more has been heard of the demarcation problem which threatened; and, indeed, we may anticipate that the actuary is destined to remain a specialist limited to a single and somewhat narrow field.⁵

SECRETARIES

THE Secretary, it has been said by an eminent judge, is a person whose duty is to do as he is told. It is questionable if such a person could claim to be ranked as a professional man; and it has even been doubted if the dictum is a correct statement of the law, at all events where the secretary of a company or other public institution is concerned. Every limited company is under a legal obligation to see that minutes are kept of all meetings both of the proprietors and of the board; it is obliged to maintain a register of proprietors and of the transfer of shares, as well as of all mortgages affecting its property; and it is required to make certain

¹ *The Accountant*, vol. lxxv (1926), pp. 661 foll.

² See *ibid.*, p. 808.

³ See *ibid.*, vol. lxxvi (1927), p. 594.

⁴ See *ibid.*, p. 334. The actuaries were able to show that the encroachment was not all on one side so long as 'Actuarial Science' remained a subject in the Chartered Accountants' examinations. It has since been dropped.

⁵ This would not be admitted by Mr. E. William Phillips, F.I.A., who looks forward to the time when many companies in the world of industry and commerce will find it necessary to engage the whole-time services of one or more actuaries. In fact, he says: 'With all this mass of work waiting to burst its dam and flood us, it is manifest that there is a serious world shortage of actuaries.' See *The Accountant*, vol. lxxvi (1927), pp. 587 ff., particularly p. 594.

returns to the Registrar. In the event of failure to comply with any of these requirements, any officer of the company concerned in the default is exposed to severe penalties. As a general rule these duties, with the accompanying legal liability, fall upon the secretary. It does not appear to have been settled whether it could ever be the duty of the secretary to act in opposition to the board in order to carry out the statutory requirements; but inasmuch as he takes charge of all the formal business of the company, conducts correspondence with members, summons the board, records its decisions, and is responsible for seeing that those decisions are made effective, it is clear that his position is one of considerable responsibility; and the same is also often true of the secretary to other public institutions.

For the discharge of these duties the secretary requires a knowledge of company law and procedure; while in most companies of medium size he also has administrative functions to perform, for which he requires a general commercial or 'secretarial' training. But whether he has administrative duties or not, his skill is one that is founded upon trained common sense rather than upon knowledge of a highly specialized or unusual kind. In smaller companies, where the office of secretary is frequently combined with that of manager, in the technical as well as the administrative sense, technical qualifications may be the determining factor in making an appointment; while even in companies where the technical and administrative departments remain distinct, it is not necessary, in filling the office of secretary, to have regard to specifically secretarial qualifications. Thus it is by no means uncommon to find the post of company secretary filled by a chartered accountant, while the secretaries of other public institutions are not infrequently barristers or solicitors. In these circumstances the comparatively late appearance of vocational organization among secretaries is not surprising. When organization came, with the formation of the Institute of Secretaries in 1891, it took the characteristically professional form. In 1902 the Institute received a charter and became the 'Chartered Institute of Secretaries of Joint Stock Companies and other Public Bodies'. The charter gave members the right to use the initials 'F.C.I.S.' and 'A.C.I.S.',¹ and laid it down that admittance should be by examination only. Every candidate for the associateship must 'have been engaged, as his chief occupation, in the office of' a public company or other public body for a period of six years;² while fellows are

¹ The title 'Chartered Secretary' has been adopted under the by-laws.

² By-law 7; it is interesting to find it stated that experience in the office of a

distinguished by having had longer experience and held more responsible posts. Articles are not insisted upon, in fact they are unusual; but they are officially encouraged and the six years' period is reduced to four in the case of those who have served under articles.¹

Many of the subjects comprised in the examination syllabus, which are very various,² are of a somewhat empirical character; nevertheless the provision of facilities for such theoretical training as is required has been pushed forward with great vigour and energy. Students' societies have been set up, largely financed by the Chartered Institute, though membership does not appear to be obligatory. Like the Chartered Accountant students' societies, they meet to hear papers read, hold mock shareholders' meetings, and so forth; but it is also part of their recognized function to give assistance to those who are preparing for the examinations. In 1923 the London Students' Society was reported to be engaged in establishing, 'at a reasonable cost', courses of lectures by competent tutors for examination students.³ Local authorities have been pressed to include in the curricula of the technical schools classes and lectures adapted for those who are studying for the Institute examinations; and many have done so. A more recent and more ambitious departure has been the foundation of university lectureships in secretarial practice. Between 1924 and 1926 lectureships were set up at the London School of Economics, Sheffield, Armstrong College, and Edinburgh;⁴ and they receive support from the Institute funds. It is the hope of the Council to see lectureships founded in every university where there is a branch of the Institute; and with the object of encouraging attendance at the classes and lectures already instituted, a pass in certain subjects at a university or approved technical school may be accepted in lieu of a pass in the same subjects in the Institute examinations.⁵ Meantime an endeavour is being made to get all

private company is not accepted because 'in such cases the *responsibility* of the secretary is not, as a rule, so wide'. See *The Secretary*, vol. xvii (1920), p. 66; *italics* ours.

¹ Companies and 'other public bodies' do not appear to put any difficulties in the way of their salaried employees taking articled pupils.

² Thus they may include 'Correspondence, Procedure at Meetings, Accounts and Book-keeping, Economics, Statistics, the principles of Banking and Finance, Mercantile Law, the Laws relating to Real and Personal Property, Joint Stock Companies, Railways, Canals, Docks, Shipping, Gas, Water, Electric Lighting, or other similar undertakings, Municipalities, Societies, Colleges, Hospitals, and other Public Bodies.' By-law 14.

³ See *The Secretary*, vol. xx (1923), p. 309.

⁴ *Ibid.*, vol. xxiv (1927), p. 513.

⁵ University graduates are in any case exempted from certain papers; and it

chartered secretaries to come to an agreement with their firms, whereby it shall be made a condition of any junior being taken on by the firm that he shall attend such classes as are available and sit for the Institute examinations, the firm paying all fees.¹

The Chartered Institute is not the only professional body in this field; the Incorporated Secretaries Association (originally the Secretaries Association) was founded in 1907 to provide an organization for those who did not belong to the senior body. It thus resembles the Society of Incorporated Accountants and Auditors; and its members followed the lead of that Society in adopting the designation 'Incorporated Secretary'. The Incorporated Association is modelled very much on the Chartered Institute; but only three years' practical experience is demanded instead of six, while the rules allowing dispensation from the examinations are believed to be somewhat less strictly administered. The Incorporated Association has roughly 3,000 members, and the Chartered Institute something more than double that number, of whom, in 1922, the majority were stated to be the salaried secretaries of public or private companies, while about 700 were the salaried employees of 'other public bodies', such as government offices, education committees, insurance committees, professional associations, and political party organizations.² Nevertheless it has been considered that with 'some 85,000 registered companies on the British Joint Stock Registry, and only 6,000 members of the Institute, there must be plenty of opportunity for securing new members';³ and it was no doubt with figures such as these in mind that the Council of the Institute, shortly after the War, gave 'general approval . . . to steps being taken towards securing that the Secretary . . . of every public company incorporated under the Companies Acts should be a Member of the Chartered Institute of Secretaries, or of a recognized incorporated professional institute or society'.⁴ It does not appear that any steps were actually taken; and, indeed, it is in the highest degree improbable that the secretarial profession will ever secure anything in the nature of a legal monopoly. But though registration may be ruled out, it is significant of the ill-defined character of the secretary's technique that the same exemption is extended to barristers, solicitors, and chartered and incorporated accountants.

¹ Those who are unable to attend a university or technical school are advised to take a correspondence course at a coaching institution, though before doing so they are counselled to communicate with the secretary of the Institute, who will recommend a reliable establishment. So far as we know this is the only instance in which a professional institute extends anything in the nature of recognition to private-venture coaching institutions.

² See *The Secretary*, vol. xix (1922), pp. 394 and 395.

³ *Ibid.*, vol. xxi (1924), p. 410.

⁴ *Ibid.*, vol. xvii (1920), p. 132.

at the same time a matter of no little difficulty to gauge the prospects of professional organization in this field.

The difficulty the secretaries have to meet is that, though they have become organized on professional lines and have pursued a forward and enterprising educational policy, this has not operated to give any distinctive quality to their craft, as is evident both from the wide variety of appointments held by members of the Institute,¹ and also by the number of secretaries of companies and other bodies who have received their training as barristers, solicitors, chartered accountants, or technicians. The place of the secretary in the business world is very different from that of the accountant or actuary. The accountant, and still more the actuary, when he accepts a seat on the board or a salaried appointment in the office, does so by virtue of a technique he has learnt elsewhere. The secretary does not; he is the true civil servant of business, the permanent under secretary to the department rather than its medical officer or legal adviser. Thus it seems improbable that any association of secretaries will ever become so closely identified with a distinct field of employment as, for example, the associations of accountants. On the other hand there is the possibility that the Chartered Institute will become a general hall-marking body for a wide range of clerical workers employed in business firms and quasi-public institutions. In that case it would become assimilated to the 'Industrial Institutes' considered in a later section of this study;² and there are some indications that this may be its ultimate destiny. The Institute claims to have 'stimulated thousands of young men and women to pursue studies which would otherwise, in all probability, not have been undertaken at all';³ while the *Secretary* records with gratification that a number of companies, including Marconi's and the Underground, as well as some government departments offer substantial inducements to members of their clerical staffs to take the Institute examinations.⁴ Yet at the same time the implications of this policy are either not understood or are not welcomed, since admittance to the examinations at present is confined to those who furnish the council with an undertaking of their intention to become members of the secretarial profession.

¹ To see how wide the variety is see *The Secretary*, *passim*.

² See below, p. 278.

³ *The Secretary*, vol. xxiv (1927), p. 651.

⁴ *Ibid.*, vol. xviii (1921), p. 370, and vol. xxi (1924), p. 651.

PUBLIC ADMINISTRATION

The Civil Service

'It is . . . one of the most important ends of political institutions . . . to secure . . . the great advantage of the conduct of affairs by skilled persons, bred to it as an intellectual profession, along with that of a general control vested in, and seriously exercised by, bodies representative of the entire people.'¹ So wrote J. S. Mill in 1861, and in another passage he speaks of 'professional public servants'. The latter phrase would have sounded strange twenty years earlier. This is not because public service was a new thing. 'The public servants of the Crown, whose special sphere was administration and finance, and who were professional administrators and not soldiers, go back to the earliest ages of the English state.'² It is because in the first half of the last century public service was not regarded as a profession.³

At one time there was no clear distinction between public service and the domestic service of the Court. Financial officials were the first to gain the status of public servants, and the Exchequer and the Chancery were the first offices to become separate from the King's household. These early civil servants were clerks, that is to say, they were tonsured and had benefit of clergy. A clerk did not necessarily proceed to minor orders. 'For the majority of clerks in government offices there was little need to assume more clerical responsibility than prudence required. For holy orders were permanent and indelible.'⁴ Before the close of the fourteenth century the lay civil servant had become established especially in the Exchequer; it will be remembered that Chaucer was a layman and a civil servant. But until Tudor times the Chancery was entirely staffed by clerks, and it was not until after the Reformation that all civil servants became laymen.

During the seventeenth and eighteenth centuries appointments were mostly through patronage and remuneration mostly through fees; and the fees were either received directly from the public or through the minister in whose office the official worked. Civil servants were thus the dependants of great personages. Dependence

¹ J. S. Mill, *Representative Government* (1865), p. 117.

² T. F. Tout, *The English Civil Servant in the Fourteenth Century* (1916), p. 6.

³ A very able article in the *Quarterly Review* (vol. xxxvi, 1827) speaks of members of the medical and legal professions and of 'those who hold situations under government' (p. 238). The writer knows nothing of a public or civil service and seems deliberately to exclude government servants from the ranks of professional men.

⁴ T. F. Tout, *op. cit.*, p. 12.

of this nature militates against the rise of group self-consciousness, and, therefore, although they had become independent of the Church, the civil servants neither recognized themselves nor were recognized by the public as forming a class comparable with physicians or lawyers. Between 1689 and 1850 the civil service was frequently a matter of serious public concern. But the aim of those interested in it and the reforms that they introduced were not directed to putting an end to this state of things, but to securing the independence of Parliament by the exclusion from Parliament of any person holding a place of profit under the Crown. The success of this movement did nothing to change the status of civil servants. Upon what event were they waiting in order that they might achieve recognition as 'professional public servants'?

The years 1855 to 1870 saw the end of patronage and the introduction of tests of competency. 'In or about the period 1850 to 1870 the cynical indifference to purity of administration and efficiency, the frank injustice and corruption and dishonesty of public patronage, which characterize the eighteenth century, . . . gave place to an austere demand for impartial selection of the best for the civil service.'¹ The first step was taken in regard to the Indian Civil Service. An Act of 1833 prescribed that four candidates were to be nominated for each vacancy in that service and were to compete in an examination; in 1853 all patronage disappeared and all appointments were through examination alone. The success of this policy in the Indian service led to its introduction in the home service. A report on the home civil service was issued in 1853 and recommended that examination should replace patronage. It was proposed that examinations should not encourage technical preparation for the service and should be of two kinds—for intellectual and for routine work. To make a beginning in the carrying out of this policy the Civil Service Commission was established in 1855 by Order in Council 'to conduct the examination of young men proposed to be appointed to any of the junior situations in the Civil Establishments'. The Superannuation Act of 1859 incidentally extended and strengthened the new system because, with certain exceptions, it confined pensions to persons admitted to the service by the Commission. An Order in Council of 1870 carried the system virtually to completion, and another Order of 1920 may be regarded as the coping-stone. The latter provides that 'every candidate (excepting those appointed directly by the Crown) shall satisfy the Commissioners that he is of the prescribed or suitable age, that he has good prospects of continued

¹ Sir Stanley Leathes in the *Journal of Public Administration*, vol. i (1923), p. 345.

good health, that he is qualified in respect of character, knowledge and of ability'.¹

The Commissioners, three in number, are appointed by and are responsible to the Crown. This arrangement is intended to free them, and does in fact free them, from political pressure.² To a certain extent they share their responsibility with the Treasury.

'As regards rules and regulations for entry to the Civil Service they are a co-ordinate authority together with the department or departments concerned and the Treasury—the Treasury having the final decision in case of difference—except possibly in questions concerning the technical and educational aspect of examinations. But as regards their quasi-judicial decision as to age, health, and character, and their awards on the results of examinations, they are subject to no political review or revision except that of parliamentary omnicompetence.'³

The tests imposed may take various forms—competitive written examination, competitive interview, nomination—but it rests with the Commissioners alone to decide whether a candidate has passed the prescribed test. It will be understood, of course, that the Commissioners do not appoint to posts in the service any more than the General Medical Council appoints doctors to medical positions. In both cases what happens is that successful candidates obtain a certificate without which they cannot be appointed to certain posts. But there is this difference between the Commission and other bodies regulating entry into professions. The Commission was set up, not only to ensure that those appointed to any civil establishment should be adequately trained, but also to ensure that an impartial authority and not an interested politician should guard the gate to the public service. This has resulted in the extension of the duties of the Commissioners to grades of manual and manipulative workers who form the large majority of those certificated by them. In this sense of the term there are about 434,000 civil servants, including 122,000 industrial workers,

¹ For a discussion of the definition of the civil service see the *Introductory Memorandum relating to the Civil Service* (1930) submitted to the Royal Commission on the Civil Service (1929) by the Treasury (Appendix to Part I of the *Minutes of Evidence*). The definition given is as follows: 'a civil servant may be defined as a servant of the Crown (not being the holder of a political or judicial office) who is employed in a civil capacity and whose remuneration is wholly paid out of monies provided by Parliament' (p. 2). This document gives a list of the offices to which appointment is made directly by the Crown. There are but few of them and the persons appointed are usually members of the service.

² Sir Stanley Leathes says that in twenty years he saw a minister on two occasions only in connexion with the business of his department and that in each case the question was Irish. Leathes, *op. cit.*, p. 348.

³ Leathes, *op. cit.*, p. 348.

178,000 belonging to the manipulative staff, and 16,000 messengers, porters, and charwomen.¹ Neither J. S. Mill nor any one else, who has used the phrase 'professional public servant', has had these latter grades in view. They have had in mind those who have undergone prolonged intellectual training and hold posts making them responsible for decisions under the minister. The most highly trained are to be found in the administrative, executive, technical, and scientific grades, and the inspectorate, numbering about 1,150, 4,350, 6,500, and 2,150 respectively.

In the conduct of the tests the recommendations in the report of 1853 have been followed. The tests are of general education and ability and not of competence in a specialized technique. The civil service therefore differs profoundly from all the professions hitherto considered in that no specialized training of a practical or theoretical nature is demanded. It has been said that an administrator must be able to use his mind freely for considered judgement, and it is held that generalized intellectual training is more likely to evoke this capacity than any other form of education. Again, whereas the history of the other professions is largely a story of the foundation and achievements of professional associations, 'the growth of organized associations of civil servants on any appreciable scale is of comparatively recent development'.² Moreover, with a few interesting exceptions, these associations have only one object, and that is to put the case of their members when matters of salary or status are under discussion by Whitley Councils or elsewhere. The significance of this is not that civil servants are unduly concerned with their material conditions; every grade is required to be represented by an association on the Whitley Council. The noteworthy fact is that the higher grades of the civil service have shown so little desire to form societies to discuss and take action regarding education, conduct, and all those matters which we have found to be of so much interest to members of other professions.

The most important exception is that of the Association of His Majesty's Inspectors of Taxes, which was formed early in the present century and issues a *Quarterly Record*.³ This periodical is devoted to a discussion of the intricate duties performed by the inspectorate and of the problems which arise owing to the delicate

¹ For an analysis of the civil service see the Treasury Memorandum referred to above.

² *Introductory Memorandum relating to the Civil Service* (1930), p. 69.

³ We have been privileged to see copies of this and other literature of the Association which is for private circulation only. The membership of the Association comprises about 93 per cent. of the inspectorate.

nature of the relations between these officers and those with whom they come into contact. The Association has published handbooks for the use of its members which deal with particular industries in order that those inspectors, whose work is connected with these industries, may be better able to carry out their duties. These officers in fact possess a technique which has been elaborated in order to deal with taxable property of many different kinds. We have become familiar with the growth of professional associations round such techniques; that which is peculiar to the position of these officers is that their technique is confined to a small branch of the government service. There are many other civil servants who practise a highly developed technique, doctors, architects, and engineers for example, but they associate with those possessing their techniques, most of whom are not in government service. This Association has therefore the distinction of being the only fully developed professional body arising within, and confined to, the civil service.

It may be said that the absence of associations, which are more than merely protective, is easily explained. Civil servants as such acquire no specialized technique and can therefore have no interests similar to those found elsewhere round which associations are built up. This explanation does not altogether meet the case. In 1918 the Society of Civil Servants came into existence and included among its objects the foundation of an Institute of Civil Servants. In furtherance of this last object it invited the co-operation of other bodies, and in 1922 the Institute of Public Administration was formed. The last named Institute has two objects: (1) the development of the civil service and other public services as a recognized profession, and (2) the promotion of the study of public administration.¹ Its journal demonstrates how wide and important is the field of problems common to all administrators. We find studies and discussions of foreign administrative systems, of the possibility of the study of administration in universities, of the principles of promotion in the public services. But the Institute is small and struggling; the membership is about 2,000, although it is open to the local government service as well as to the civil service. In explanation of the lack of interest in administrative technique it may be said that until recently activities, such as those which figure in the programme of the Institute, would not have been looked upon with favour. A civil servant did his duty in the light of the high, though rather dry, ethical tradition of the governing classes, and he did not talk shop. To busy oneself with these

¹ Constitution of the Institute of Public Administration, clause 2 *a* and *b*.

problems out of hours was to make the talking of shop into a hobby, and that was vulgar. Though this attitude has passed away, it has not been succeeded by any widespread interest in organized attempts to make the common problems of civil servants the basis of association.

Public opinion did not grant professional status to the civil service until a system of testing for competence was at work. But is it the resulting high standards of competence alone which have made such an impression upon public opinion? Why does the reputation of the service stand so high? The answer is that, in the opinion of all, the members of the service are not only competent but are also animated by a high sense of duty and responsibility to the government and the public. So far as the ethical code of the service has been embodied in writing, it is to be found in Treasury circulars.¹

'But over and above these the civil service, like every other profession, has its unwritten code of ethics and conduct for which the most effective sanction lies in the public opinion of the service itself, and it is upon the maintenance of a sound and healthy public opinion within the service that its value and efficiency chiefly depend. The first duty of a civil servant is to give his undivided allegiance to the State at all times and on all occasions when the State has a claim upon his services. With his private activities the State is in general not concerned, so long as his conduct therein is not such as to bring discredit upon the service of which he is a member. But to say that he is not to subordinate his duty to his private interests, nor to make use of his official position to further those interests, is to say no more than that he must behave with common honesty. The service exacts from itself a higher standard, because it recognizes that the State is entitled to demand that its servants shall not only be honest in fact, but beyond the reach of suspicion of dishonesty. . . . A civil servant is not to subordinate his duty to his private interests, but neither is he to put himself in a position where his duty and his interests conflict. He is not to make use of his position to further those interests; but neither is he so to order his private affairs as to allow the suspicion to arise that a trust has been abused or a confidence betrayed. . . . It follows that there are spheres of activity legitimately open to the ordinary citizen in which the civil servant can play no part or only a limited part. He is not to indulge in political or party controversy, lest by so doing he should appear no longer the disinterested adviser of Ministers or able impartially to execute their policy. He is bound to maintain a proper reticence in discussing public affairs. . . . And lastly, his position clearly imposes upon him restrictions in matters of commerce and business from which the ordinary citizen is free.'²

¹ See *The Introductory Memorandum relating to the Civil Service* (1930), p. 27.

² *Report of the Board of Inquiry appointed by the Prime Minister to investigate certain Statements affecting Civil Servants* (1928), Cmd. 3037, ss. 55, 56, and 57.

It is not to be supposed that the rules laid down for the guidance of civil servants touch more than the obvious cases, and moreover 'practical rules for the guidance of social conduct depend as much upon the instinct and perception of the individual as upon cast-iron formulas; and the surest guide will always be found in the nice and jealous honour of civil servants themselves. The public expects from them a standard of integrity and conduct not only inflexible but fastidious'.¹ The public has not been disappointed, and has accorded to the civil service professional status because its members discharge their duties not only with competence but also in the light of a refined ethical code.

The Local Government Service

When compared with the civil service the local government service presents differences at almost every point. It is not a vocation of ancient lineage. Before the reform of local government it is hardly correct to speak of a local government service. Such work as the local authorities carried out was mostly performed by contract.² There is no body with the powers of the Civil Service Commission and therefore no uniform method of testing fitness. Not only are those with other professional qualifications, medical, architectural, engineering, and so on, proportionately far more numerous than in the civil service, but they occupy all the leading positions. The officer, who has no qualifications other than those of a pure administrator, seldom rises to the top of the tree. Lastly professional associations are numerous and active.

To these points it might be added that, as a consequence of the absence of any single authority controlling entry, there are, in a sense, as many local government services as there are local government authorities. But such a statement would be misleading if it was not understood that there is a considerable passage of officials, especially in the higher grades, from the service of one authority to that of another. Further, the absence of a controlling

¹ Ibid., s. 59.

² The important permanent officials were solicitors. 'What usually happened was that the titular Clerk of the Peace appointed as his deputy . . . one of the leading solicitors in the county town who undertook the whole of the work. . . . We find in practice the post of the Deputy Clerk of the Peace held, almost as a hereditary possession, by the principal firm of solicitors. . . . The payment of a fixed salary to the County Surveyor or Bridgemaster remained . . . right down to the end of the eighteenth century most unusual. . . . Not until the latter part of the eighteenth century, and then only in the more advanced counties, do we find a complete separation of the functions of the County Surveyor and the contractor.' S. and B. Webb, *English Local Government. The Parish and the County* (1906), pp. 503, 504, 518, and 519.

authority does not mean that local authorities are entirely a law unto themselves in the matter of whom they shall appoint to their service. In the case of certain posts, that of medical officer of health for instance, their choice is restricted to those holding a particular certificate, in this case that of a registered doctor. In other cases the approval of a government department is required before an appointment is valid. More numerous are the posts in respect of which a grant is received from the central government if certain conditions are fulfilled. In these latter cases the local authorities are not bound to comply with the conditions laid down by the government, but if they disregard them, they must pay for the pleasure of so doing.

The great majority of local government servants are recruited at about the age of sixteen to seventeen. To fill medical and some other posts, it is necessary to recruit older persons who have completed their professional training. Though the higher posts in the service can only be filled by persons with special qualifications, of which possession of a certificate is evidence, these certificates can often be gained while in the service, and are mostly so gained. Thus it comes about that, not only those who occupy the junior posts, but also most of those who fill the highest positions enter the service young. It was stated in 1927 that 'over a hundred authorities have . . . adopted a recognized school leaving certificate, the preliminary examination certificate of the [National] Association [of Local Government Officers] or an equivalent certificate as a standard for junior entrants into the service', and that 'several local authorities have decided to recruit juniors by open examination'.¹ Most local authorities, however, have no entrance test. But while examination plays so small a part in entry, the possession of a certificate gained by later examination is almost indispensable for those who seek promotion to responsible posts in the service.

As in the case of the civil service there could be no associating together of local government servants until a local government service had been created. But in contrast to the civil service, local government servants have created numerous professional associations. Of these associations the National Association of Local Government Officers, known as Nalگو, is the most important. It was founded in 1905, and in January 1930 there were over 50,000 members out of an estimated potential membership of 64,000. Later in that year the amalgamation of the National Poor Law Officers Association with Nalگو brought in another 12,000 members. This is a remarkable achievement. The situation which

¹ Royal Commission on Local Government. *Minutes of Evidence* (1928), p. 1663.

faced Nalگو at the beginning of its career was full of difficulty. The senior members of the service were lawyers, accountants, engineers, and surveyors, who belonged to their respective professional associations or to sectional organizations connected with these associations comprising those members of each profession who were in the local government service. It was feared by those who guided the fortunes of Nalگو in its early days that, if it had no relations with these sectional organizations, it would be a negligible body, since the senior members of the service would be outside. On the other hand it was feared that, if a joint committee was created between Nalگو and these sectional organizations, Nalگو itself would become a mere sectional body, representing only those who belonged to no previously existing professional association. The problem was solved by setting up a joint committee with those organizations, half at least of whose members were also members of Nalگو. Thus it was hoped that membership of Nalگو would become general, whether or not members chose to belong also to other organizations.

This arrangement paved the way for an effort to make Nalگو the representative association of the profession as a whole. To what has the great and undoubted success of these efforts been due? The excellent organization of benevolent and provident schemes does much to attract and hold membership. In matters of salary and status the Association stands for the setting up of Whitley Councils of which three are now in existence. Where councils do not exist, it is necessary to proceed by deputation, and no less than 130 deputations were arranged in 1929. In these negotiations Nalگو acts for some of the seventeen associations represented on the joint standing committee; the remaining associations prefer to conduct such negotiations separately. For many years Nalگو pressed for improvements in the matter of superannuation. An Act was passed in 1922; it is permissive and had been adopted by 702 authorities by the end of 1929. Nalگو desires that it should be made compulsory and, if this came about, it would do much to facilitate the transfer of officials from authority to authority, and thus to weld the profession into a whole.

It is not primarily on account of its activities as a protective association that Nalگو has attained its present position. Its success is due to its championship of the idea that local government service is a profession and not a mere heterogeneous assemblage of doctors, solicitors, and others who for a time accept service under local authorities. From its earliest days the Association has worked for the 'recognition of the fact that local government

officers . . . belong to a distinct profession . . . and should have a status equal to that of civil servants'.¹ It recognized that education was the key to the situation. It put its educational programme in the forefront, and in giving evidence before the recent Royal Commission on Local Government it appeared primarily as an advocate of professional training.

The problem of professional education in this profession was and remains full of complexity. It is not that local government servants, at least of the higher grades, are untrained but that their training is confined within very narrow limits. Moreover the certificates which they hold are awarded by bodies of very different origin and authority. There is nothing in the system which aims at bringing administrators into the service, whether by introducing persons of a mature age who have been able to pursue full-time general education, or by providing for the direct study of administration and its problems. The result is familiar. In no country are the drains so perfect, the water so wholesome, the roads so excellent. But equally in no country are the towns so unplanned and, at least in the case of those that have been built while there has been a local government service recruited and trained in this way, so lacking in dignity and beauty. We have got what is inevitable when, as the chief adviser of a casually selected group of local residents, there is put in a solicitor.

In 1911 Nalگو established a scheme of training for the lay or clerical side of the service. In 1914 it prepared a very comprehensive scheme which came to nothing owing to the War. The matter was taken up again in 1919, and at present the position is roughly as follows. Nalگو conducts a qualifying examination for entrants at the age of sixteen, but it has no desire to continue in this field and would prefer that employing authorities should adopt matriculation or other recognized tests. It also conducts an intermediate and a final examination which it considers suitable for those who remain on the lay or clerical side. It appears from the syllabus of these latter examinations that Nalگو is attempting to elaborate a specialized technique for the clerical staff.

It is obvious that this does not meet the central difficulty. If successful it merely creates one more technical and specialized qualification and raises the clerical grade to the same status as the accounting, surveying, and other grades. This is recognized by the Association which, together with the Institute of Public Administration, has pressed upon the universities the need for courses in public administration leading to a degree or a

¹ Royal Commission on Local Government. *Minutes of Evidence* (1928), p. 1666.

diploma. Such courses now exist in London, Liverpool, and Manchester. The universities are not unwilling to play their part, but they are faced by the difficulty that education of this nature demands the full time of the student if it is to be more than a makeshift. At present, owing to the early age at which entry to the service usually takes place, full-time study at a university is seldom possible. Neither Nalgo nor the universities can resolve this difficulty. It rests with the government, central and local, so to reshape the conditions of entry that there may be permitted to arise a profession of local government in the full sense of the term.

Whatever solution may be found for this central problem, there will always remain the necessity of training and certificating members of the service in specialized techniques. Ample and on the whole satisfactory arrangements exist for the gaining of these distinctions. There are, however, some very remarkable features in the system. There is nothing unusual in the fact that many local government servants gain certificates from the Institution of Civil Engineers, the Chartered Surveyors' Institution, and similar bodies. It is surprising, on the other hand, to find that certificates are also gained from bodies consisting wholly of local government servants. Such for instance are the certificates granted by the Institute of Municipal Treasurers and Accountants and the Institution of Municipal and County Engineers. It is hardly an exaggeration to say that promotion in departments of accounting and engineering depends upon the possession of certificates granted by these bodies.

The two sectional bodies just mentioned, together with others which also conduct examinations, do not limit their activities to the educational field. The common bond, which led the members to associate, was their interest in municipal accounting or engineering, as the case might be, and they pursue these interests by the usual methods of conferences and publications. Indeed, the extent to which the numerous special duties of local government servants have led to the formation of associations for the discussion not merely of the techniques but also of their proper application is remarkable. There are also numerous associations which do not examine, such as the Association of Directors and Secretaries for Education and the recently formed Society of Town Clerks. Nor is this all. The Association of Municipal Corporations and similar associations of other local government bodies are said to owe their foundation and their policy largely to their chief officers. Most of the evidence presented to the Royal Commission on Local Government was submitted by bodies of the

latter kind, and if it is true that the driving force behind these bodies is supplied by the officers, it is mostly upon the observations made and opinions formed by the officials, as a result of professional interest in their duties, that the public has to rely for guidance when the whole scheme of local government is under review.

TEACHERS

TEACHING is an ancient occupation, at least as ancient as physic or the law. Apart from the older universities there was no craft organization of teachers in medieval times as there was of physicians and of lawyers. Teaching was one of the functions of the priest, and so also at one time was the practice of medicine. As medical learning and technique developed, the physicians became dissociated from the Church. But there was no educational technique which teachers had to acquire, and there were thus no forces at work, similar to those among physicians, making for the segregation of teachers as a class. The connexion between teaching and the Church has endured to our own day, and the headmastership of a great public school is still a stepping-stone to a bishopric. The rise of the teaching profession took place almost in our own times, and may be traced to the profound changes which have come over the educational world.

Towards the beginning of the last century schools could be roughly divided into endowed schools, a miscellaneous group, including private-venture establishments and commercial academies, and the schools newly established by voluntary societies. The Endowed Schools Inquiry Commission of 1858 showed to what depths for the most part the first class of school had fallen; the picture of the commercial academy, as sketched by Dickens, was not greatly exaggerated; while the newer schools for the masses were struggling with problems of overwhelming difficulty. It is probably correct in the main to attribute the changes which have taken place in the first two classes of school to the gradual transformation of the third category into the elementary school of to-day. The story of government intervention is well known and need not be repeated. Step by step primary education at public expense was provided for all, and in the present century the State began to make provision for secondary education both by founding new schools and by subsidizing existing schools. Thus the endowed schools were either drawn into the state scheme or

exposed to competition by grant-aided schools, and the position of the private-venture school was also profoundly changed by these events.

As the State assumed financial responsibility for the elementary schools, it laid down conditions regarding their conduct. Among other matters it set out requirements which must be fulfilled by those who taught in them; these requirements have been continually revised, and it is not necessary to trace the successive changes. The present position is that the Board of Education has statutory powers to issue regulations respecting the recognition of teachers. It recognizes certificated teachers who must have completed an approved course of training and have passed certain examinations; the training may be taken either in a university or in an approved training college. It also recognizes uncertificated teachers and teachers in special subjects. The term 'uncertificated' teacher is misleading, since these teachers must also have passed examinations, though of a less exacting nature. The Board has not laid down any specific conditions that must be fulfilled by teachers in secondary schools, but it requires that they shall be adequately qualified.

Once the State has undertaken the financial burden, some system of approving teachers is inevitable. This particular system is in reality a system of state registration of teachers in grant-aided schools. No functions are reserved by statute to recognized teachers; but since no grant will be given to Local Education Authorities unless recognized teachers are employed, these teachers have in fact a watertight monopoly of the posts in all grant-aided schools. Moreover, just as the Board can prevent the employment of any unrecognized teacher, so it can prevent the continued employment of any recognized teacher, of whom it has come to disapprove, by the use of the same mechanism—the withdrawal of grant. There are 126,000 certificated and 31,000 uncertificated teachers in regular employment in England and Wales. There may be another 40,000 teachers of at least equal qualifications in universities and non-grant-aided establishments who are not subject to the Board of Education requirements. It would thus appear that about four-fifths of the better qualified part of the teaching profession is in effect state regulated.

The vocation of teaching is ancient, but the organization of teachers is modern.¹ It may be, as is sometimes alleged, that there was an ideal of unity and common purpose among teachers in the Middle Ages, though no organization arose in which these ideals

¹ See *English Teachers and Their Professional Organizations*, by Mrs. Sidney Webb. Supplement to the *New Statesman*, 25th Sept. 1915.

were embodied. In any case they had long since faded out of memory, and the conditions at the beginning of the nineteenth century could hardly have been less favourable for their revival. The teachers in elementary schools occupied humble positions, and between them and the head master of Eton there was a gulf fixed, the impassability of which can only be appreciated by those who understand Victorian exclusiveness. It is probable that the position of these teachers deteriorated in some respects as a result of the revised code, issued in 1862, which followed upon the report of the Newcastle Commission of 1861. The system of payment by results was a blow to the self-respect of the teachers. In 1867 Matthew Arnold reported: 'I find in them in general, if I compare them with their former selves, a deadness, a slackness and a discouragement which are not the signs and accompaniments of progress.'¹ It was calculated that in 1871 the average income from all sources of a certificated master, including the remuneration of his wife or sister for teaching sewing, was £92 a year.² The suggestion that teachers might be consulted, when changes affecting their conditions of service were under consideration, was treated with scorn. To do so, the responsible minister is reported to have said, would be like asking chickens with what sauce they would be served. The social position of the teacher at this time is illustrated by a letter sent from an English rectory inquiring for a schoolmistress. After mentioning the necessary accomplishments, which included 'moral control', the writer stated that the schoolmistress 'lives in this house, and takes her meals in the kitchen (we do not keep an indoor manservant)'.³

It is little wonder that the increase of elementary teachers, as a result of the Act of 1870, should have led to voluntary organization among them to deal with problems of common employment. But this is to anticipate. In 1846 the College of Preceptors had been founded, largely owing to the action of the head masters of the smaller endowed schools. Tests were required of candidates for membership as to 'the amount of knowledge and the art of conveying it to others'. The College endeavoured to establish training centres for secondary teachers and inaugurated the system of external examinations. Later it lent powerful assistance to the movement towards statutory registration presently to be described. The motive which gave rise to this College, the membership of which was never large or proportionate to its influence, may be said to

¹ Quoted by the President of the N.U.T. in his address in 1920. *Annual Report of the N.U.T.* (1920), p. 30.

² *Ibid.*, p. 29.

³ D. F. Thompson, *Professional Solidarity among the Teachers of England* (1927), p. 63.

have been the consciousness of common responsibility. After playing an important part for some decades, it fell into the background. As its somewhat absurd title suggests, there was an archaic flavour about its methods and constitution which soon ceased to fit in with the needs of the time. There is only one other organization of earlier date than the National Union of Teachers which deserves mention. The Head Masters Conference, founded by Thring of Uppingham in 1869, admits to membership the head masters of such schools as it pleases, having regard to 'the measure of independence enjoyed by the governing body and the head master, the numbers in the school and . . . the number of resident undergraduates at Oxford and Cambridge educated at the school'.¹ It is a kind of club and only worthy of mention here owing to the part which it has played, largely behind the scenes, in influencing the educational policy of this country, especially in regard to those matters with which the National Union of Teachers was concerned in the first years of its existence. It now plays a smaller part; the majority of its members are also members of the Incorporated Association of Headmasters, and tend to interest themselves in educational politics through that channel.

Before 1870 there existed a number of local organizations of elementary teachers which mostly had a denominational basis. They possessed little importance, and during the discussions which preceded the passage of the Act of 1870 it was realized that, if the teachers were to exert any influence under the new régime, a national organization would be required. A conference was called by three London denominational organizations at which twenty-six local associations were represented. The decision was taken to form a National Association of Elementary Teachers the aim of which was 'to unite together, by means of local associations, public elementary teachers throughout the kingdom, in order to provide a machinery by means of which teachers may give expression to their opinions when occasion requires, and may also take united action in any matter affecting their interests'.² Until 1889 membership was confined to teachers in schools under government inspection. In that year the word 'elementary' was dropped from the title, and membership was opened to all teachers with certain minimum qualifications; these qualifications were the possession

¹ *Public Schools Year Book* (1931), p. xx. There are now about 150 schools, excluding about 20 schools in the Dominions, the head masters of which are members of the Head Masters Conference. Since the only working definition of a 'public school' is that its head master has been thus honoured, there may be said to be this number of public schools in the country.

² D. F. Thompson, *op. cit.*, p. 77.

of a certificate or its equivalent. Uncertificated teachers were excluded until 1919. In 1931 the membership was over 138,000, and probably represented at least three-quarters of the teachers in elementary schools eligible for membership.¹

'The Union is neither an Incorporated Professional Institute nor a Trade Union, but it combines the best features of each, with certain functions peculiarly its own.'² Leaving on one side for the moment the judgement contained in this official appraisal of the N.U.T., the description of its position may be taken as accurate. The Union is not a professional institute in the sense that it does not examine applicants for membership or attempt to set upon them a hallmark of technical efficiency. It is not merely a trade union because of its wide interests. The organ of the N.U.T. is *The Schoolmaster and Women Teachers' Chronicle*, and 'if even its best friends could not claim that it had taken any notable interest in the scientific development of education, its consistent advocacy has played a notable part in the improvement of conditions in primary schools, of opportunities for their pupils and of the status of their teachers'.³ It is because of the deep and constant concern of the N.U.T. with the institutional side of the educational system that it is more than a trade union. Judged by the proportion of teachers in elementary schools whom it has organized, the Union has been remarkably successful. Its achievement has been made possible by a succession of able officials at head-quarters. The well-organized facilities for legal assistance and other services have proved a great attraction. But it has not succeeded in its aim to be 'the organization which fully represents the whole of the teaching profession'.⁴ Nor is it untroubled by rivalries in its own special province. One important body, rival only on a geographical basis, the London Teachers Association, became merged in the N.U.T. in 1922 as the London County Branch of the Union. The London teachers had had their own organization since 1872, which was so vigorously and ably conducted that the members were long loath to join the larger body. The amalgamation brought a great access of strength to the Union, since before amalgamation only about a quarter of the members of the London Teachers Association were members of the N.U.T. The National Union of School

¹ It is impossible to give the exact fraction. There were 157,000 certificated and uncertificated teachers in employment. But the 138,000 includes some teachers not in employment (married teachers who have retired for instance) and some teachers in universities and secondary schools.

² *N.U.T. Its Activities, Achievements and Aspirations* (1930), p. 2.

³ *The Times Educational Supplement*, 14th Jan. 1922, p. 15.

⁴ *Union Achievements*—a leaflet published by the N.U.T.

Teachers, formed about twenty years ago, is an organization of uncertificated and supplementary teachers mostly in the north-west of the country. It is opposed to the N.U.T. on the ground that the Union has not sufficiently pressed the claims of the lower grades of teachers. It is not a body of much importance and does not publish membership figures. More serious, at least potentially, are the divisions on the sex question. Two-thirds of the members of the N.U.T. are women, and long ago the cry of equal pay for equal work began to agitate the Union. In 1909 the National Union of Women Teachers was formed to advocate this policy; membership is compatible with that of the N.U.T., but there seems to be little overlapping. The president of this body said in 1925 that her union 'was engaged in the search for the ideal relationship between the men and women . . . teachers';¹ to observers from outside the search would appear to have ended long ago with the discovery of the principle of equal salaries for both sexes. In 1919 the N.U.T. adopted this policy, though it soon became apparent that it was not prepared to put it in the front of its objects. This did not reconcile the secessionist association, and it alarmed some of the men to the extent of bringing to birth the National Association of Schoolmasters. Membership of this latter body, which is not compatible with that of the N.U.T., has risen slowly but steadily from about 5,000 to about 7,500. If it was not for the admirable machinery of the N.U.T., the accumulated funds, and other material advantages accruing to membership, it is likely that the split would have been more serious so far as numbers are concerned. As it is, the latter secession is not unimportant, first because of the personnel of the seceders, and secondly because the sex question may again become urgent, in which case the seceding body would form a rallying ground for those who do not want to see the claim for equal salaries made a major item in the policy of the N.U.T. In addition to its views on this question, the National Association of Schoolmasters holds that boys over the age of seven should be educated by men. There are apparently 6,500 women teaching boys of this age, and a speaker at a conference of this body said: 'We are not anti-feminists. . . . We say that they (the 6,500 women) are in the wrong place. It is a man's job and we must see that men do it.'²

There are other organizations of elementary teachers which are of a sectional nature rather than rivals of the N.U.T. Among elementary teachers the class teachers have long been in a majority—they now account for two-thirds of the membership of the

¹ *The Times Educational Supplement*, 3rd Jan. 1925, p. 10.

² *Ibid.*, 26th Apr. 1930, p. 189.

N.U.T. As the system of national education grew, it became apparent that the class teachers were faced by special problems, and that many of them would never become head teachers; need was therefore felt for a separate organization, and the National Federation of Class Teachers was founded in 1892. The Federation attempts to influence the policy of the N.U.T., and to induce it to adopt the programme of the class teachers; it also attempts to get class teachers elected to high office in the Union. It was so successful in the latter sphere that, whereas between 1870 and 1912 only two class teachers reached the highest office in the Union, between 1912 and 1921 only two head teachers became president. The days of its greatest power were just before and just after the War during the salary crusade. Its membership is now only about one-third of the 1920 figure, and includes but one-fourteenth of the elementary class teachers. The years of relative contentment since 1922 have seen only one class teacher as president of the N.U.T. The National Association of Head Teachers was founded in 1897 partly in answer to the organization of the juniors; of recent years there has been a steady rise in membership which now amounts to nearly 9,000. It has, however, done little to press a sectional policy upon the Union, and has found a useful sphere of work in the discussion of the educational problems and practice that face head teachers.

The N.U.T. had been in existence for nearly twenty years before it made a place in its ranks for other than elementary teachers, and by this time the separate organization of secondary teachers had begun. The only considerable body of members of the N.U.T., whose duties do not lie in elementary schools, are those who have passed from elementary to secondary school work but maintain their connexion with the organization which they joined in the first days of their career. In the world of secondary education there are four non-competing and allied associations, of which the oldest is the Association of Head Mistresses founded in 1874 by Miss Buss. She was president for the first twenty years of the existence of the Association, which began with 13 and now has over 500 members. No small part of the astounding transformation of the young ladies' academy into the modern high school for girls is due to her and her colleagues. The Association now takes its place with the Incorporated Association of Head Masters, founded in 1890, the Incorporated Association of Assistant Masters in Secondary Schools, founded in 1891, and the Association of Assistant Mistresses in Secondary Schools, founded in 1884. They perform in their own spheres much of the work that

is undertaken by the N.U.T. in the field of elementary education. The salary question is rather more in the background, though they are represented on the Burnham Committee on the salaries of teachers in secondary schools, and the assistant masters' Association publishes a black list after the style of the B.M.A. Subject activities are rather more prominent, of which the admirable memoranda published by the assistant masters' Association are good examples.¹

In the field of secondary education there are allies but no rivals, and between these four allies there is a joint committee. The mention of two other bodies completes the tale of association in the teaching world. These two bodies are the Association of Teachers in Technical Schools and the Association of University Teachers. The last-mentioned body is of recent date and has a membership of under 2,000, mostly in the modern universities.

Owing to diversity of aims co-operation between the associations of teachers was long rendered impossible. As the school boards became energetic and powerful, they began to organize higher grade schools, and were invading, or threatening to invade the sphere of secondary education. At the same time the County and County Borough Councils were setting up facilities for technical education. The secondary schools were improving, but there was no national scheme of secondary education, and chaos reigned in that field. Something had to be done. The leaders of the N.U.T. and the more prominent members of the school boards evolved an idea which had a wide appeal. In the words of Mrs. Sidney Webb they

'had a vision of an all-embracing system of public education from the infant school to the modernized university, administered by one *ad hoc* elected local authority, regulated by one central government department and served by a homogeneous body of salaried men and women disciplined by one type of training and belonging to one professional organization. All educational posts, not only in the public elementary schools, but also in the secondary, technical, and university institutions, were to be thrown open without favouritism to all members of this united profession, in which promotion was to be exclusively by merit, measured not by the social antecedents or previous educational advantages of the candidates, but by their personal character and their ascertained professional and technical qualifications. The inspectorate, both local and central, was to be mainly recruited from the more experienced and able teachers.'²

¹ See for example the *Memorandum on the Teaching of English* (1923), and the *Memorandum on the Teaching of History* (1925).

² *New Statesman*, 25th Sept. 1925, Supplement, p. 19.

To this programme very powerful forces, including the secondary schools, were opposed; the opposition was weakened, however, by inability to agree upon any alternative scheme. Finally the Act of 1902 settled the controversy, the merits of which do not concern us here, and laid the foundations of the system that we know to-day. But until that year no accommodation was possible between the N.U.T. and the other professional associations; they were ranged in opposite camps. After 1902, however, the energies of the teaching world went into the building up of the new system, and when the memories of former controversies had died away and the N.U.T. had tacitly resigned itself to taking elementary education as its sphere in the new order, a measure of harmonious co-operation became possible. It was facilitated by the tendency towards the passing away of differences in social status which is still in progress, and by the adoption on the part of secondary school teachers of methods designed to improve and safeguard their material interests. These associations are represented on the Burnham Committee for secondary schools; they bargain and employ the black list. Thus it has come about that the four associations of secondary school teachers have combined with the N.U.T. and the Association of Teachers in Technical Schools to set up a joint committee, the 'joint six', the existence of which is evidence of a degree of unity in the teaching world that was unthinkable sixty years ago.

Many factors have contributed towards bringing this revolution about, among which the part played by the voluntary associations has not been negligible. The foundation and co-operation of these associations implies, on the one hand, that the teachers in privileged positions have come down from their pedestals, and, on the other hand, that the formerly despised elementary teachers have gained in status and have lost much of their sense of inferiority. At this date it is difficult to visualize the restrictions which once surrounded the elementary teachers. Their position was that of persons set to perform a prescribed task. They were disciplined and regimented, and narrow limits were set to their freedom within and without the schools. The N.U.T. has conducted an unceasing campaign for freedom; largely as a result of its protests the power of the inspector to endorse teachers' certificates has been abolished, the right of appeal against adverse reports granted, 'freedom obtained from compulsory extraneous tasks, the inspectorate opened to certificated teachers, permission obtained for teachers to serve as members of local education committees, the declaration binding training-college students to serve in an elementary

school abolished, and freedom won in relation to the arrangement of time-tables and methods of teaching. Under the conditions which formerly prevailed the status of the elementary teacher was such that he or she could have little or nothing in common with the members of the recognized professions. Their disappearance has done much to remove the distinction between elementary and other teachers, and to permit the growth of the conception of a single profession to which all teachers belong.

It is inevitable that the activities of the Union in relation to the financial position of its members should have attracted more public attention than its activities in regard to matters of status. The superannuation Acts of 1898, 1918, and 1925 have revolutionized the ultimate prospects of teachers. More remarkable still have been the increases in salary. Reference has been made to the miserable incomes when elementary education first became universal. In 1914 the average salary of a certificated class teacher was £129 for men and £96 for women; in 1924 it had become £299 for men and £250 for women. The years immediately preceding and following the War saw prolonged and acrimonious disputes over the question of salaries. One such dispute occurred in Herefordshire in 1914. Since 1910 negotiations had been proceeding with the local authority which refused to establish a salary scale and was paying low rates relatively to those paid in other rural areas. Finally the teachers handed in their notices, and when these expired without a settlement being reached, the schools were left without a staff. While 'on strike' the teachers were supported by the sustentation fund of the Union, and they received a measure of sympathy in the area that was remarkable in view of the fact that it was rural. The communications from the Board of Education left no doubt about its views as to the policy of the local authority. The settlement, which was regarded as a victory for the teachers, included a scale giving a minimum salary of £100 to head masters and £90 to head mistresses.

The post-War period was full of difficulty. In 1919 the Standing Joint (Burnham) Committee on the salaries of teachers in elementary schools was set up at the invitation of the President of the Board of Education 'to secure the orderly and progressive solution of the salary problem in public elementary schools by agreement on a national basis'. The Committee consists of fifty members, half representing the teachers and half the Local Education Authorities. It agrees upon and issues scales of salaries. The local authorities are under no legal obligation to pay according to these scales,

though they may be regarded as under a moral obligation to do so since their representatives constitute half the panel.¹ The Board of Education has always used its influence to induce the authorities to follow the scales, and all authorities now pay in conformity with them. But the refusal of some authorities to fall into line in the earlier years of the existence of the Committee, coupled with the confusion and difficulties of the immediate post-War period, led to more than one deplorable dispute.

The Burnham Committee issued a provisional minimum scale in 1919. By the autumn of 1920, all but four authorities were paying on this scale or better, whereas a year previously 287 authorities had been paying less. In October 1920 a second report laid down scales which were to hold good until 1925. These definitive scales were issued just at the beginning of the economy campaign. In 1922 the Superannuation Act was amended so as to require 5 per cent. of the teacher's salary to be paid as a contribution towards the cost of the superannuation benefits, and the teachers offered a 5 per cent. reduction of their salaries in addition. Thus amended the scale was to hold good until the revision in 1925. There were many disputes over alleged failures to carry out this award; some disputes were settled without notices being given, others during the currency of the notices, while others again led to strikes.

The most serious disputes were at Southampton, Gateshead, and Lowestoft. In February 1922 Southampton gave notice that it would reduce salaries 20 per cent. below the provisional minimum scale, whereas if it had followed the agreement, it would have paid according to the definitive scale which exceeded this minimum. The schools remained closed from the end of March to the beginning of July, during which period 455 teachers were fully 'sustained' by the Union. Attempts to staff the schools with new teachers failed, and in the end the salaries appropriate to Southampton on the definitive Burnham award were obtained. An equally deplorable dispute occurred at Lowestoft in the following year. The council demanded a ten per cent. reduction below the Burnham scale; and when this was refused, the teachers were dismissed, and new teachers were imported. The dismissed teachers, who were 'sustained' by the Union, opened centres to which many parents

¹ The Local Education Authorities are under an obligation to pay the Burnham Scales to the extent that under Article 9 of *Grant Regulations No. 1 (Elementary Education)* payment of grant in full is conditional on the Board being satisfied that the efficiency of education is not endangered by failure to pay the scales. The Board have power, if in their opinion it is so endangered, to make deductions to ensure that the expenditure to be met from rates is not less than it would have been if the scales had been paid. A similar provision is included in *Grant Regulations No. 4 (Higher Education)*.

sent their children; the council prosecuted these parents; the Board of Education refused to recognize the schools staffed by the imported teachers as efficient, and finally the council gave way.¹

The policy of the N.U.T. in regard to the detailed organization of elementary education has less general interest. It should be placed to the credit of the Union that it has kept itself commendably free from sectarian controversies, and in this respect it has shown itself to be among the most level headed of all those bodies which have entered into the field of educational controversy. Looking back upon the record of the Union, it is remarkable to find how many of the changes for which it has pressed are now regarded as desirable reforms: the abolition of payment by results and of half time, the raising of the school-leaving age, the reduction in the size of classes, the medical inspection and medical treatment of school children, and the shaping of the system in conformity with the principle that the needs of the child of wage-earning parents are not limited to accomplishments demanded by a life of manual labour.

Mention must now be made of a project which has played a large part in the recent history of the profession. In 1861 the College of Preceptors, influenced by the Medical Act of 1858, suggested that a professional council might be created and charged with the duty of keeping a register of qualified teachers to whom certain legal privileges would be given. The interests of the College were concentrated upon endowed and private schools, and 'in its inception, therefore, the idea of a register reflects the desire of a large class of schoolmasters, below the class of those in public schools of the first grade, to justify their claim to be considered a body of professional men worthy of as much social regard as any other similar body'.² In 1869 W. E. Forster introduced a bill to authorize the inspection of schools and to establish a register. 'The bill was not so much professional as administrative', and its object was to give the State some control over secondary schools rather than to initiate any system of professional self-government.³ It was opposed by the controllers of secondary schools who were unwilling that their freedom of

¹ At Lowestoft the trouble seems to have been due to one very forceful and obstinate personality. He repeatedly stated that he was going 'to smash the N.U.T. and the Burnham Committee'. He seems to have terrorized the local education committee.

² *Teachers Registration Council. Handbook II*, p. 1. This *Handbook* contains a valuable historical summary by the late Sir John McClure from which we have been permitted to quote.

³ *Ibid.*, p. 2.

choice of teacher should be in any way limited and that their schools should be subject to an external test of efficiency. The bill was dropped, and the Act of 1870 soon diverted attention to other matters, though private bills aiming at the institution of a register were introduced in 1879 and 1881.

When the matter again attracted general attention, the situation had been transformed. The Department of Education, as it was then called, had issued regulations which in effect formed a register of teachers in grant-aided schools. The N.U.T., representing these teachers, displayed no great interest in projects for statutory regulation, but it was determined that, if any council or other body was to be set up for the purpose of registration, the Union should be represented upon it. Bills were introduced in 1890, 1891, and 1893, and there was much discussion whether the register should include all teachers or only secondary teachers. The latter proposal ran directly counter to the ideals of the N.U.T. because such a register would have tended towards the permanent separation of the teaching world into two divisions. The Commission of 1895 reported that 'there was a marked general agreement as to the necessity of some measure for the registration of teachers' and recommended that there should be one register for all teachers.¹

Four years elapsed before effect was given to these recommendations. In 1899 the Board of Education Act gave power to constitute, by Order in Council, a Consultative Committee, the duties of which should be to advise the Board on any matter referred to it and to frame regulations for a register. It continues to perform the first function, and the reports which it has issued are well known. In fulfilment of its second duty regulations were drawn up which provided that there should be a Teachers Registration Council, half the members to be nominated by the President of the Board and half by various professional organizations. The Council was to keep a register, in which certified elementary teachers were to appear in column A, and secondary school teachers with prescribed qualifications in column B. This double-column arrangement proved to be the downfall of the whole system.² The N.U.T. argued that it introduced into the profession

¹ *Teachers Registration Council. Handbook II*, p. 4.

² This is not the only occasion on which the question of two columns as against one has caused trouble. The Dentists Act Committee could not understand why there should be such excitement in the world of dentists over the question whether there was to be one column or more than one in the new register which was recommended. One column was finally agreed upon to the great indignation of qualified dentists who found themselves in the same list as unqualified but practising dentists.

precisely that division against which the Commission had reported, and there were other difficulties. The elementary teachers were admitted to the register without the payment of a fee; and the fees, paid by those who had the honour to appear in column B, did not produce enough money to get the register printed. The Council led a troubled life until 1905, when it reported that 'it is not practicable to frame and publish an alphabetical register of teachers such as appears to be contemplated by the Act of 1899'.¹ In 1906 this section of the Act was repealed, but at the same time it was provided that at some future date there should be set up by Order in Council a body representative of the teaching profession which should keep a register of names in one column.

The decision of 1906 was to institute an authoritative professional council, the immediate duty of which should be to keep a statutory register. There were intimations, though of a vague kind, that it would in time find other important duties to perform. The years between 1906 and 1912 were occupied with discussions concerning the constitution of the council. These discussions disclosed the fact that the antagonisms of earlier years had largely subsided, and as they proceeded, they led to an increasing measure of agreement rather than to the development of irreconcilable views as in former days. After many delays an Order in Council was issued in 1912 setting up a Teachers Registration Council consisting of 44 members and a co-opted chairman. The latter alone need not be a teacher, and thus the Council is a strictly professional body. Of the 44 members, 11 were to be appointed by the universities and 11 each by the associations of elementary, secondary, and technical teachers. Important changes in 1926 raised the membership to 50 and gave 12 representatives each to the same four groups of teachers who, except in the case of the university teachers, are to be elected by the direct vote of the teachers in each group. The two extra seats are to be filled by the co-option, if the Council so desires, of persons representing spheres of teaching not adequately represented among the members. In 1929 the whole body of registered teachers was converted into a society to which permission was given to use the title of the Royal Society of Teachers. The Teachers Registration Council is now in effect the governing body of this society, the members of which have the right to use the professional designation M.R.S.T.

The only definite duty assigned to the Council is the keeping of a register of 'such teachers as satisfy the conditions of registration

¹ *Teachers Registration Council. Handbook II*, p. 5.

established by the Council'.¹ No privileges are given to the registered and no disabilities imposed upon the unregistered. In the original Order the power to remove names from the register was implied; in the new Order it is expressly given. But before any name is removed, the council must, if the teacher concerned so desires, consider the report of an investigating committee, which is to include two members co-opted from outside the Council. To fulfil its duty, the Council has drawn up the conditions which must be complied with by those who desire to register. Generally speaking a candidate for registration must produce evidence of possessing specified academic attainments and of having had both training in teaching and experience of teaching. It is estimated that of the 200,000 teachers in active service in England and Wales, 120,000 are eligible for registration. Nearly 80,000 teachers had registered by the end of 1929, of whom 46,000 were engaged in elementary, 21,000 in secondary, 10,000 in specialist, and 3,000 in university and private education.

By force of circumstances the Council is obliged to recognize as eligible for registration those whom the State and important teaching bodies employ. Thus it registers certificated teachers and university teachers, even though the latter have had no instruction in methods of teaching. The only field, where it can hope to set the standards itself, is that of the miscellaneous group, such as the teachers of music, and unless its recognition carries a prestige that it has not yet attained, its standards will hardly be effective. Though no legal privileges attach to registration, some few education authorities have reserved posts to registered teachers; there may be further developments along these lines. In 1930 the Council adopted the suggestion, which the Association of Head Teachers put forward in 1924, and declared its aim to be 'to secure that none save registered teachers shall exercise professional supervision over the work of other teachers'.² But unless persons ineligible for registration were proposed for these posts, which in all probability seldom happens, the only result of this policy, if adopted, would be to tax those selected for promotion the sum of two guineas, that is to say the amount of the fee payable on registration.

What else can the Council do? The President of the Board of Education said in 1912 that the object of the Council 'would be not only the formation of a register of teachers. There were many other spheres and fields of usefulness for a council representative

¹ *The Registration Council Order in Council* (1912), preamble.

² *The Times Educational Supplement*, 16th Aug. 1930, p. 358.

of the teaching profession. He hoped that they would be able to speak with one voice as representing the teaching profession, and that the Board would be able to consult with them.'¹ The Board has consulted the Council, and the Council has called conferences which have not been useless. But at present the tendency is for the profession to enter the world of professional politics, using that word in its widest significance, through the professional associations, either separately or jointly by means of the 'joint six' for instance. It is through these associations that the teachers are attempting to express their ideals and to enforce their policies. The Teachers Registration Council is thus left somewhat in the air.

The story of the Teachers Registration Council is an excellent illustration of the growth of unity within the profession during the last two decades. But it is not easy to say of what other tendencies it is a sign or what part it will play in the future. The movement towards registration was influenced by the supposed analogy with the medical profession; but the analogy was not sound. The medical register was instituted long before the State had begun to employ more than a handful of doctors; many decades before the setting up of the Teachers Registration Council, the employment by the State of teachers had led to the institution of what was in effect a state register of teachers. The latter register remains, and is likely to continue to be, the effective register. There was a mixture, even a confusion, of motives in the movement. Two principal motives can be distinguished; it was desired to raise professional qualifications and also to gain a measure of self-government. Between these projects there is no necessary connexion; the former could have been achieved under the then existing régime; the most hopeful method of achieving the latter would be to give teachers at least the right to be consulted when projects relating to the regulations concerning the certification of teachers are under discussion.

JOURNALISTS

It has often proved difficult to describe the whole range of activities falling within the scope of a profession; more often than not they are many and various. But a connecting link can usually be found

¹ Quoted in an article 'The Teachers Council' in *The Times Educational Supplement*, 1st Jan. 1927, p. 7.

between them because it appears on analysis that these activities take the form of applying a particular technique in different spheres of practice. This cannot be said of journalists. They are employed in reporting, writing up, interviewing, sub-editing, and though these are not jobs which any one can do without a considerable amount of experience, no specialized intellectual training is an indispensable preliminary. Moreover the modern newspaper is the joint product of many persons specializing in different directions; several crafts are brought into play before each item gets into a paper, and so many hands are concerned with any single item, collecting it, writing it up, finding a headline, arranging where it is to go, that the impression made upon the newspaper reader is not to be attributed to any one person.

This division of labour and consequential factory production of newspapers are not in themselves either good or bad. The controlling and co-ordinating power will determine their character; but that power is to-day, in the case of the great majority of newspapers, in the hands of the business editors. They work for the proprietors, and the latter regard their papers much as the proprietors of great retail stores regard their shops. They provide what they suppose the public to want. 'They live for the world as it is and serve it on the principle of its essential gullibility; but above all they think of it as customers. Therefore they introduce it in the popular daily to just such a display of materials as may be seen in any great shop window in Oxford Street. They may be good enough for human nature's average food but they are common. They proclaim to "all the sensual world" the pleasures of snobbery, curiosity and amusement.'¹ Thus it comes about that foreign news, apart from 'sensations' in foreign countries, finds increasingly little space, since such news is not thought to be what the public wants. Moreover the whole product is sold at a price that is only a fraction of the cost, and the balance is made up out of advertisement revenue. Therefore the paper must not offend advertisers; in fact it must offend none and must try to please all. It is the function of the modern journalist to serve behind the counter and to contribute to the sales by the performance of some specialized task.

It was not always so. At the beginning of the last century the reputation of the full-time journalist was low, though the occasional journalistic activities of literary men did something to dignify the vocation. Cobbett demonstrated the power of the independent journalist; but it was the founding of periodicals, the *Edinburgh*

¹ H. J. Massingham, 'The Independent Editor', in *Sells World Press*, 1921.

Review in 1802, the *Quarterly Review* in 1809, and the *Westminster Review* in 1824, with such men as Jeffrey, Lockhart, and Mill as editors, which produced the first responsible, informed, and independent journalists. In those days the periodicals guided opinion; later they were superseded in this function by the dailies, and they came to be organs of comment. The daily may be said to owe its origin to the passing of the Reform Bill and to the invention of steam printing. The great epoch of the daily began with the appointment of Delane to edit *The Times* in 1841. That story is well known. Delane had no newspaper rivals and therefore no need to fear offending his readers; he never had to consider advertisers, financial interests, or millionaire proprietors, and he recognized that power implied responsibility. A passage in a letter from Reeve, one of Delane's leader writers, shows to what heights the conception of professional duty had risen.

"The responsibility of journalists is in proportion to the liberty they enjoy. No moral obligation can be graver. But their duties are not the same, I think, as those of statesmen. To find out the true state of affairs, to report them with fidelity, to apply to them fixed and true principles of justice, humanity, and law, to inform, so far as possible, the very conscience of nations, and to call down the judgement of the world on what is false, base or tyrannical, appear to me to be the first duties of those who write."¹

In the third quarter of the last century there was thus a group of men in responsible positions, mostly editors and foreign correspondents, who took a high and serious view of their duties. This group was always small in number; its members were scattered, many being abroad. Though united by a sense of common responsibility, no question arose of the testing by examination of new entrants to their ranks, and therefore it is not surprising that no professional association was founded by them. Not more than four dailies now maintain foreign correspondents.

At the time when the great epoch of the daily was passing away and the new journalism was in the making, the first professional association was founded. The National Association of Journalists dates from 1884, and out of it arose the Institute of Journalists which was incorporated by Royal Charter in 1890. It would seem that the impulse towards association was rather a desire to copy the organization of established professions than any spontaneous movement towards coalescence. The circumstances of the time

¹ Quoted by B. Kingsley Martin, *The Triumph of Lord Palmerston* (1924), p. 89. This book gives a most valuable insight into the influence and character of the daily press in the time of Delane.

are to be seen in an inspection of the objects of the Institute as set forth in its charter. The hitherto unformulated idea of a profession of journalism takes shape in clauses which assume what was then becoming common form. The Institute is to secure the 'advancement of journalism in all its branches' and to obtain 'for journalists as such formal and definite professional standing'.¹ Foremost among the objects is the promotion 'of whatever may tend to the elevation of the status and the improvement of the qualifications of all members of the journalistic profession'.² This is to be achieved by devising 'measures for testing the qualifications of candidates for admission to professional membership of the Institute by examination in theory and practice or by any other actual and practical tests'. It is also an object of the Institute to promote 'by all reasonable means the interests of journalists'.³

The Institute was founded at a time when, under the pressure of circumstances, there were increasingly few men whose position evoked a sense of responsibility. The story of the journalists in this respect runs counter to that of every profession that we have so far examined, and in consequence the situation was unpropitious for the adoption of any but trade-union objectives. But though these objectives formed the one bond which was powerful enough to unite the members of the vocation, and though organization in self-defence by the less well paid intellectual workers was at that time coming to be thought respectable, only a small place was allotted to them. In the words of its secretary the Institute 'failed' to satisfy the desire of the mass of journalists for a protective association, and there was a break-away among the younger men.⁴ They formed the National Union of Journalists in 1907. Newspaper proprietors, managers, and directors, though they are admitted by the Institute provided that they can qualify as journalists, are not eligible for membership of the Union.⁵ 'The Union began mainly, if not wholly, first of all, as a wages movement.'⁶ It was organized as a fighting machine and campaigned with unparalleled success. Whereas in 1913 the average weekly pay of provincial reporters and sub-editors was not more than 35s., the minimum weekly pay is now £4 7s. 6d. Its chief concern at the moment is to obtain compensation when posts are lost owing to amalgamation. By adopting the legal status of a trade union, by concentrating upon a single issue, and by confining membership

¹ *Charter of the Institute of Journalists*, clause 2 b.

² *Ibid.*

³ *Ibid.*, clause 2 m.

⁴ *The Journal of the Institute of Journalists*, Oct. 1926.

⁵ The list of the Presidents of the Institute include Messrs. R. D. M. Blumenfeld, H. A. Gwynne, J. L. Garvin, A. G. Gardiner, Lord Burnham, and Sir Robert Donald.

⁶ *The Journalist*, Apr. 1927, editorial article, p. 72.

to working journalists, it has achieved that kind of success at which trade unions aim.

In 1916 the suggestion that the two bodies should amalgamate was put forward by the Institute, and the Union replied to the effect that the Institute was a creature of the proprietors. In 1919 the Union took a step to the left and affiliated with the Printing and Kindred Trades Federation. This created another obstacle to amalgamation, and it is not surprising that, when negotiations were re-opened between the two bodies in 1921, nothing resulted. The Institute was perhaps condescending, and the Union certainly suspicious. In 1926 there was a crisis in the affairs of the Union. Owing to the affiliation mentioned above, the members found themselves called upon to cease work during the General Strike. There was a revolt against the advanced tendencies of the leaders and many resignations; after the strike a ballot was taken, and it was decided to continue affiliation. Nevertheless, when the question of amalgamation was again raised, the Union entered into negotiations in a more accommodating spirit. Amalgamation being found impossible, a scheme for mutual membership and delimitation of functions was drawn up; the Institute was to concern itself with professional and educational matters, while the Union was to deal with salaries. It was finally discovered, however, that the charter of the Institute would not permit of such a scheme, and negotiations were dropped. 'We have to face the fact', said the President of the Institute in 1930, 'that any fusion of the Institute and the Union is, at the moment, quite out of the question. . . . The Institute and the Union must go their own ways. They are, very largely, parallel ways and they must overlap in places.'¹ The Union with a membership of over 5,000 is chiefly but not solely concerned with salaries, as may be seen from the fact that it has given an exhibition worth £200 a year in connexion with the course for journalism at the University of London. On the other hand the Institute with its membership of over 2,000 is not uninterested in the salary problem, and it has an economic section of which newspaper proprietors and editors may not be members; its main work, however, lies in what may be called the professional field.

It is not surprising that journalists, whether through the Institute or any other association, should have failed to stem the invasion of journalism by commercialism; it was wholly beyond their power to erect any effective barrier. Even if they had been fully organized and united, they could have achieved nothing by refusing to associate themselves with the new journalism. They

¹ *The Journal of the Institute of Journalists*, June 1930, p. 109.

have no monopoly of a technique indispensable to the proprietors who are in a position to go their own ways, whether or not the existing journalists are willing to work for them. It is noteworthy that the University of London grants a diploma *for* journalism and not *in* journalism.¹ There are also establishments, such as the London School of Journalism, but they are largely concerned with such technical matters as the correction of printers' proofs.

While this onerous and responsible task of ascertaining the truth about current events, and of commenting upon them in the light of 'the fixed and true principles of justice, humanity and law', has fallen under the sway of men with the manners and morals of vendors of quack medicines, it might well be asked whether journalists, unable to influence the main course of events, have brought influence to bear upon lesser issues. There have been beneficent reforms; the legal restrictions upon reporting of divorce cases is an instance. The part played by organizations of journalists, however, in initiating and pressing such proposals has been small. Among reforms of a similar nature, much to be desired at the present day, are restrictions upon comment on murder cases and upon the writing of articles for other persons to sign. When wives of convicted murderers communicate their memoirs to the Press while their husbands are awaiting execution, disgust is widespread; but the professional organizations of journalists do not seem to concern themselves to find whether such deplorable exhibitions could be prevented. There is no such widespread disgust at the common practice of placing articles before persons of some degree of temporary notoriety for them to sign, because the public is not aware of what is going on. Nevertheless this is a practice closely affecting the honour of journalists, and it is disappointing not to find any organized protest against it.

So little activity is manifested by journalists in these directions that it might be thought that desire for reform was altogether lacking. But any one acquainted with the world of journalism knows that it is not so. It seems that somehow or other the regard for the honour of the profession has never found effective means of expression through associations. Perhaps the impossibility of controlling the main lines of development makes journalists feel so much at the mercy of powers beyond their reach that they have never taken up problems where their influence might be of some effect.

¹ The syllabus is widely drawn and is roughly as follows: A. English Composition; B. One of the following subjects: Principles of Criticism, History of Political Ideals, History of Science; C. Two of the following subjects: English Literature, History, Modern Languages, Political Science, Economics, Philosophy, and Ethics.

AUTHORS AND ARTISTS

IN common estimation the author, the composer, and the playwright are regarded as belonging to the class of intellectual workers and therefore as coming within the professional world. The position of the artist is not so clear, though most people, if called upon to do so, would place him not far from the vocations just mentioned. But it is evident that these vocations do not stand in line with those hitherto considered when viewed from the angle that has been adopted in this study. This is in some degree due to the fact that the use of the aesthetic faculty is so prominent a feature. That is also true of architects. Architects, however, require in addition an intellectual technique, which can be learnt and tested, and this is not the case with authors, composers, and playwrights. The latter are differentiated from most of the vocations treated in this study by the absence of any technique which can be made the basis of a formal course of instruction. Further, they do not meet to transact business and are not in direct touch with clients. Therefore they have no motive for building up associations with any of the objects that we now recognize as distinctive of the professional world. They have indeed set up the Society of Authors, Composers, and Playwrights, and since there were found at one time upon its council such diverse persons as Mr. Robert Bridges, Miss Ethel M. Dell, Dr. Vaughan Williams, and Mr. A. S. M. Hutchinson, it is clear that some common bond does exist between them. This bond is the interest in copyright and similar matters which occupy the whole attention of the Society. The Society is therefore a protective and not a professional association.¹

In order that the works of playwrights and composers may reach the public they must be interpreted. There are musicians and actors whose artistic endowment is no less than that of those whose works they interpret; but for most musicians and actors no such claim is made, and they interpret by making use of such technical accomplishment as they have acquired by training. In the case of actors the training is purely practical, and no system of certificating has appeared or is likely to grow up. Among musicians the position is different; there are interpreters of great talent or even of genius, and at the other end of the scale there are performers in poorly paid orchestras. Neither of them, though for very different reasons, require any considerable formal training. But there are

¹ There are also numerous associations, such as the British Academy and the Royal Society of Literature that we may class as study associations.

also musicians who have undergone prolonged training and have received certificates of competence; they are mostly either teachers of music or organists. The Associated Board of the Royal Academy of Music and of the Royal College of Music conducts examinations and admits successful candidates either to the licentiateship of the former or to the associateship of the latter. Certificated membership of these bodies is of great value to those intending to take up the teaching of music for a livelihood under any public authority or other institution. Similarly those desirous of obtaining a post as organist find the certificate of the Royal College of Organists to be more or less indispensable. Thus it may be said that bodies exist in the world of music, which resemble many that we have studied in other vocations, though they are of importance only in a small part of the field. There also exist, among both actors and musicians, powerful associations, such as the Musicians Union, the functions of which are purely protective.

BROKERS

THE function of the broker is to bring buyer and seller together. He draws up the necessary documents when transactions take place, and for these services he receives a fee. He may facilitate the passage of goods from seller to buyer, but the property in them never becomes his at any stage of the transaction; and on that account pawnbrokers are not brokers in the strict sense of the term. Brokers invariably specialize. We find stockbrokers, insurance brokers, shipbrokers, produce brokers, and so on; but some brokers render services which are separate from and additional to broking. Shipbrokers, for instance, not only undertake chartering, that is to say the finding of ships for cargoes and cargoes for ships; the sale and purchase of steamers, the reporting and clearing of steamers at ports, the responsibility for the loading and delivery of their cargoes, and the purchase of bunker coal all fall within their province. When shipbrokers act in the latter capacities they may cease to be general agents, whereas a broker proper is always a general agent. There are other persons one of whose duties it is to bring buyer and seller together; this is the case with house agents, but they are not classed with brokers because their broking function is only one among many.

Two motives lead brokers to form associations. For the furthering

of their business most brokers resort to a central meeting-place where the broker with a commission to sell is likely to meet a broker with a commission to buy. It soon becomes necessary to agree upon regulations governing the transaction of business, and associations are formed for this purpose. The members of an association usually find it convenient to buy or build their own meeting-place, and when this happens they proceed to draw up rules for admission and expulsion. In this fashion associations of brokers come to have many resemblances to the professional associations that we have described. Some brokers, whether or not they are led to form associations in this way, have another motive for association. They employ a technique of some complexity, and in the manner now so familiar they attempt to construct tests of competence by examination. It is not necessary here to examine all the associations of brokers; we may select stockbrokers as an example of the first group and shipbrokers as an example of the second.

Stockbrokers are chosen as an example of their group because their organization is elaborate and because their clients are drawn from the general public. Produce brokers, who belong to this group, have a restricted clientele capable of judging for themselves concerning the business in hand; they are therefore not under the responsibility, which falls upon stockbrokers, of safeguarding the interests of the uninformed public.

'The London Stock Exchange is a voluntary association of those who deal in the various securities which pass by the common name of stocks and shares. . . . It has been the result of a natural growth resulting in great measure from the enormous increase in number and variety of foreign stocks and of the stocks, shares and debentures connected with industrial undertakings in modern times. . . . The main objects with which this large body of persons have associated themselves together appear to have been the easy and expeditious transaction of business, and the enforcement among themselves of fair dealing. To these ends a building has been provided for their exclusive use, and a set of rules formed for the admission and expulsion of members, and the control of their conduct both between one another and towards the public.'¹

Stockbroking was first heard of towards the end of the seventeenth century, and several attempts were made to suppress the practice. In 1697 an Act was passed 'to restrain the Number and ill practice of Brokers and Stock Jobbers'.² This was followed in 1733 by Barnard's Act 'to prevent the infamous Practice of Stockjobbing'.³

¹ *Report of the Royal Commission on the London Stock Exchange* (1878), p. 5.

² 8 & 9 Will. III, c. 32.

³ 7 Geo. II, c. 8.

But circumstances were too strong and the practice survived. Meeting first at the Royal Exchange and afterwards at a coffee-house, the stockbrokers obtained control of a building in 1773. Later a fund was raised and a building constructed in Capel Court, which was opened in 1802, and in 1812 a code of rules was printed for the first time.

From 1802 until recently there was an important distinction between the proprietors of the building in Capel Court and the members of the association which used it. In 1875 a new arrangement came into force. All members were required to hold one or more shares, and although any one holding a share before 1875 was permitted to retain it, any one not a member, coming into possession of a share, was obliged to sell it within twelve months to a member. It follows that the distinction between members and proprietors has now almost passed away. Stockbrokers in their capacity of proprietors appoint a board of directors who administer the property. In their capacity of members of the voluntary association they appoint a committee for general purposes which makes regulations regarding admission, expulsion, and the transaction of business. This committee consists of thirty members elected annually by ballot, and it is entrusted with powers that may be fairly called autocratic; within certain limits it can alter, amend, or repeal existing regulations, and make new regulations as it pleases.

The usual method of becoming a member is to purchase a nomination from a retiring member or from the legal representatives of a deceased member. If this was the only method, the number of members would be absolutely limited. But a certain number of clerks with four years' service (fixed annually by the Committee—in recent years twenty-five per annum) are permitted to become members without nomination. To enter by the first method it is necessary to buy a nomination now worth about £350 to £400, to buy three shares (market value now about £156 each), and to pay an entrance fee of 600 guineas. To enter by the second method it is necessary to buy one share and to pay an entrance fee of 300 guineas. There is an annual subscription of 100 guineas. Every year each member has to reapply for membership though he does not have to pay the entrance fee more than once. While candidates for admission must comply with these and other conditions, including the making of a declaration that neither he nor his wife is engaged in any other form of business, admission and readmission are wholly within the discretion of the Committee for general purposes. In this matter the power of the Committee is unfettered as is evident from the following remarkable rule:

'Such power of re-electing members and admitting candidates is hereby declared to be a purely discretionary power exercisable (and it shall be exercised) by the Committee in a perfectly uncontrollable manner for the benefit of the Stock Exchange as a body (including both proprietors and members) and the decision of the Committee in any case or in any number of cases shall not be liable to be disputed or challenged by any individual affected thereby.'¹

Candidates must declare whether they intend to practise as brokers or as jobbers, and members are strictly divided into these two classes. Jobbers are dealers in securities and are therefore not brokers in the strict sense of the term. Disputes between members go to the Committee for decision, and the decision is final. The Committee can suspend or expel any member who fails to comply with a decision, is guilty of dishonourable, disorderly or improper conduct, or who disobeys any rule. The rules may be said to fall into two groups—those which regulate the relations of members to members and those which regulate the relations of members to the public. As examples of the latter it may be noticed that advertisement is forbidden, though the Committee spends some hundreds of pounds a year in advertising the fact that brokers may not advertise; circulars may only be sent to clients; commissions may only be shared under certain circumstances, as, for instance, with banks. Brokers who have orders to sell a security from one client and orders to buy the same security from another client may arrange the transaction without the intervention of a jobber, but they may not charge double commission. There is a minimum scale of commissions, and in practice charges always accord with the scale.

The Committee also makes regulations governing the working of the Stock Exchange as a whole. Since these regulations permit speculation and option dealing and since these practices have been criticized, some mention must be made of them. Speculation is not the purchase of securities in the hope that they will rise in value; that is the hope of all who invest money. Speculation is in effect the purchase of securities with borrowed money in the expectation of selling them at a higher price and thus not only of making a profit but also of finding the money to pay for them.² The regulations permit the obtaining of the necessary accommodation. Option dealing is in effect a kind of betting on the future trend of values. A case can be made out for the view that under certain circumstances neither of these operations is in the

¹ *Rules and Regulations of the Stock Exchange* (1930), no. 21 (2).

² In addition to the 'bull' there is also the 'bear' speculator who speculates for a fall by selling short and repurchasing.

least anti-social, but that they are often so is equally not open to doubt. The defence for permitting them is that it is impossible to stop these operations when anti-social without forbidding them altogether. Moreover the public wants to speculate and would go elsewhere if these operations were made impossible on the Stock Exchange which of course has no monopoly. This argument, if not conclusive, carries much weight. Outside brokers abound and are ready to offer anything that attracts the public. It so happens, however, that both speculation and option dealing have been on the decline in this country for some years. The reasons for this are neither the increasing pressure of restrictive rules nor the growing unwillingness of the public to gamble, but a number of more or less technical reasons relating to the classes of securities usually gambled in and the increase in bank and brokers loans. In consequence the responsibility of the Stock Exchange in the matter is ceasing to be of much importance.

Owing to the power of making rules it is possible for the Committee to refuse to allow dealings in a security, and in practice permission must be given in every case before dealing may begin. In addition the Committee grants a quotation to certain securities in which it is permissible to deal. Since permission to deal and quotation are much sought after by promoters, it is possible for the Committee to exercise pressure upon companies. Elaborate regulations, revised in 1930, have been issued governing the conditions under which these privileges will be granted. In general it may be said that the regulations are designed to prevent the conferment of these privileges upon companies the constitution of which leaves loopholes for certain kinds of deception. It is sometimes said that the regulations might be more strict. The answer is again that the Stock Exchange has no monopoly and that, if many securities were refused quotation, a market would be furnished for them elsewhere. The tightening-up of the conditions under which companies may be registered can be achieved by amendment of the law, and it is to this remedy that we must look for the prevention of deception. It is to the credit of the Stock Exchange that it demands more than the law demands, and it is difficult to see that it could do more than it has done.

The Royal Commission of 1878 came to the conclusion that 'in the main the existence of such an association and the coercive action of the rules which it enforces upon the transaction of business, and upon the conduct of its members has been salutary to the interests of the public, while in the administration of its laws the Committee for General

Purposes has, so far as we have been able to discover from the evidence, acted uprightly, honestly, and with a desire to do justice. . . . We recognize a great public advantage in the fact that those who buy and sell for the public in a market of such enormous magnitude in point of value should be bound in their dealings by rules for the enforcement of fair dealing and the repression of fraud, capable of affording relief and exercising restraint far more prompt and often more satisfactory than any within the reach of the courts of law.'¹

There is every reason to suppose that a similar inquiry conducted to-day would endorse this verdict.

The testing of competence by examination forms no part of the work of associations of stockbrokers or of produce brokers. There is as yet no specific technique attaching to these vocations which can be so tested. But it is of some interest to notice that courses of lectures have recently been organized both by stockbrokers and produce brokers. The Liverpool Cotton Trade Institute was founded in 1926; it is closely connected with the Liverpool Cotton Association, which is the local organization of cotton brokers, and the president of the latter is *ex-officio* president of the former. The object of the Institute is 'the study of the economic and technical aspects of the cotton trade';² it organizes lectures and encourages members to attend classes at the school of commerce. It is possible that there might grow up out of this beginning a formal scheme of training.

There are, however, associations of brokers among whose objects the testing of competence by examination plays an important part. Of such associations the Institute of Chartered Shipbrokers is the most noteworthy. Some mention has been made above of the duties performed by shipbrokers. The meeting-place of shipbrokers in London is the Baltic Exchange, to which are also admitted grain, produce, and other merchants. At other ports there is generally an exchange where brokers and merchants meet. The existence of a private market was not, however, as in the case of stockbrokers and cotton brokers, the reason for the foundation of the Institute. The Institute originated in 1913 and obtained a charter in 1920. In the petition for a charter it was related that 'the Institute aims at the elevation of the profession or business of shipbrokers as a whole, and the promotion of their efficiency and usefulness by compelling the observance of strict rules of conduct as a condition of membership and by setting up a high standard of professional and general education, knowledge

¹ *Report of the Royal Commission on the London Stock Exchange* (1878), p. 5.

² *Liverpool Cotton Trade Institute: Report for 1929-30*, p. 1.

and otherwise'.¹ The first object of the Institute as set out in the charter is 'to devise and impose means for testing the qualifications of candidates . . . by examination in theory and in practice'.² Another object is 'to exercise professional supervision over the members'.³ There are two classes of members, fellows and associates; there is an intermediate and a final examination. Associates are those who have passed these examinations and are employed in the office of a shipbroker, while fellows are those who have passed the same examinations but are over twenty-five years of age and are engaged in shipbroking as principals. The Council has power to grant exemption from examination in exceptional cases, but this power is rarely exercised. To maintain discipline a discipline committee has been set up with elaborate procedure. A member can be expelled for 'dishonourable' conduct or for conduct 'derogatory to the Institute'. The Institute also issues a scale of minimum agency fees. Most people would not hesitate to describe shipbroking as a business, and it is both interesting and significant to find an organization, embodying the ideals and methods of a professional association, in a dominating position in such a vocation.⁴

INDUSTRIAL INSTITUTES

WE have first to consider two vocations in which important organizations have come into being chiefly for the purpose of testing competence by examination. These two vocations are banking and insurance. At first sight an inspection of the constitution of the Institute of Bankers does not reveal anything which differentiates it from professional associations of the type that we have hitherto met. We find mention of the familiar objects and methods; there are various grades of members, ordinary members, associates, certificated associates, and fellows. Any member of the staff of a recognized bank is eligible for ordinary membership; certificated associates are members who have passed the examination

¹ *The Shipbroker*, vol. i (1931), p. 8.

² *Charter of the Institute of Chartered Shipbrokers* (1920), s. 4 (1).

³ *Ibid.*, s. 4 (4).

⁴ The Institute of Arbitrators, incorporated in 1925, may be mentioned here. Arbitration is a free-lance vocation with a highly specialized technique. It is proposed ultimately to require an examination test from candidates for membership.

held by the Institute. The council can elect as an associate any one with ten years' service, any one who has passed the examination, or any one on the staff of a bank who is a graduate. It can also elect any one as a fellow whom it thinks fit for the honour.

All banks recognize the possession of the certificate by paying a bonus to those who hold it. Practically all banks expect the members of their staffs to sit for the examination, and some banks make it a condition of entry into the service that they shall do so. In consequence nearly all bank clerks become members. But most of them resign if and when they gain the certificate, because the banks reward the acquisition of the certificate and not the status of a certificated associate. It is evident that for the great majority of the members of the staffs of banks the Institute is merely an examining body. The Institute was set up by the directorate and is controlled from above; about half the Council consists of directors who have been elected to the fellowship because of the position which they occupy, while the other half consists of representatives of local centres who are mostly senior officials.

An organization of this kind may be called an industrial institute in order to distinguish it from a professional association. The significance of the adjective 'industrial', when used in this connexion, is not precisely that which it bears when employed to characterize a certain form of trade unionism. It does not imply, as in the latter case, that industrial considerations override craft considerations, because within banking there is no multiplicity of crafts. It implies that the Institute is organized from above by those who desire that their employees shall be efficient, from which it follows that its vitality does not reside in any sense of corporate responsibility among the members of the vocation as a whole.

Though the distinction between the Institute of Bankers, as it is at present, and a professional association is clear, nevertheless the vocation might undergo an evolution which would bring the Institute closer to the status of a professional association. The Institute indeed is already something more than a mere examining body; it organizes lectures on current banking topics, some of which are published in its journal, and the local centres of the Institute usually make some attempt to arrange courses of lectures for those studying for the certificate, sometimes in connexion with the local school of commerce. Moreover the syllabus for the certificate comprises elementary economics and banking practice. With the progressive mechanization of banks, it is possible that a

certificate of this kind will not be regarded as necessary for those performing the mechanical processes and that there will be a dropping out from any connexion with the Institute of members of the staff at one end of the salary scale. At the other end are managers and directors, and in a few years it will be unusual for any one to rise to a managerial post who is not certificated. Directors of banks fall into three categories; those who are there because they bring, or are supposed to bring, business; those who attend to some aspect of the organization, such as the recruitment of the staff; and those who guide banking policy. The importance of the duties falling to the third class cannot easily be over-estimated, and as an aid to the fulfilment of these duties, more advanced study of those subjects included in the course for the certificate would at least be useful and may come to be thought indispensable. Should this happen, and should it be realized, as seems possible, that men who have made no study of economics and banking practice are as much out of place as directors of banks as partners in a firm of accountants would be who had made no study of accountancy, the present position would pass away, and something in the nature of a professional association might arise.

The world of insurance shows some likeness to the world of banking. The first local insurance institute, the members of which were on the staffs of insurance companies, seems to have been founded in Manchester in 1873. Others soon arose, and in 1897 nine local institutes were federated under the title of the Federated Insurance Institute which obtained a charter in 1912 and became the Chartered Insurance Institute. There are now thirty-nine local institutes with a membership of about 20,000. Any member of the staff of a recognized insurance office can become a member of a local institute, and all members of local institutes are members of the Chartered Insurance Institute. The latter holds examinations for the associateship and the fellowship, and only in very exceptional cases are persons admitted to these grades who have not been examined. The insurance offices attach great importance to the passing of these examinations, and no one with any ambition entering an office would fail to attempt to gain the associateship.

The Institute receives considerable financial assistance from the companies, and in this sense it may be called an industrial institute. Nevertheless the Institute resembles a professional association more closely than does the Institute of Bankers. The technique is highly developed and there is no place for the unexamined high up

in the hierarchy of membership; while the council, though not confined to fellows and associates, is largely composed of senior officials who are in the higher grades. The directors of insurance companies have therefore no direct control over the Institute. They do not in fact concern themselves with administrative functions to the same extent as do directors of banks; the function retained by the insurance directorate is to form a supervisory body which watches over the general policy and finance of the company. Consequently, even if the directors of insurance companies become experts, they will be experts in finance rather than in insurance and therefore will not tend to become included within the professional association of insurance practitioners.

In the worlds of insurance and of banking we discover organizations which from one point of view may be described as based rather upon industry than upon craft. Mention must now be made of organizations which are still more plainly industrial. It may be said that the chief object of these bodies is to direct research into practical problems arising from the application of the science or sciences employed in the industry concerned, to discuss difficulties, and to disseminate information. When institutes extend their activities no further, they do not call for special mention here, however important they may be. They are outside our scope, just as are organizations devoted to the study of pure science. On this account it is sufficient to mention the Iron and Steel Institute (founded in 1869, charter in 1889), the Institute of Metals (founded in 1908, charter in 1914), the Institute of Petroleum Technology (founded in 1914), the Institute of Fuel Technology (founded in 1925), and the Institute of Wireless Technology (founded in 1926).

There are, however, certain institutes which, while chiefly devoted to the objects mentioned above, extend their activities into the field that we have learnt to regard as characteristic of professional associations. The following sentence taken from an official publication of the Institute of Builders will make this clear.

'An Institute whose membership is a recognized certificate of approved business conduct and technical qualifications is in the position of providing for the general public acceptable standards of practice and ability, and for the industry a safeguard against the competition of the unqualified and undesirable. It is towards that position that the Institute is steadily making progress, and towards securing which position the Institute invites co-operation and support of its aims.'¹

¹ *The Institute of Builders. A Summary of its Position in the Building Industry*, p. 1.

The Institute of Builders grew out of the Master Builders' Society, dating from 1834, which from the outset had aims wider than those of an ordinary employers' protective association. It is instructive to note the first three objects of the Institute as now defined. They are (1) 'to promote excellence in the construction of buildings and honourable conduct in business'; (2) 'to develop technical education for the industry; to provide lectures for this purpose; to test by examination or otherwise the competence of persons in or about to enter the industry'; (3) 'to discover and encourage inventions for use in the industry'.¹ The Institute has long been interested in technical education and has initiated since the War a system of examinations; it attempts to get its members appointed to the advisory committees of technical schools. It has been active in the appointment of arbitrators and in the drafting of a standard form of building agreement.

Three other institutes may be mentioned as also extending their activities somewhat beyond the sphere of applied science into the professional field. The Institute of Brewing (founded in 1886) is primarily concerned to promote research which may be useful to the fermentation industries, but it also holds examinations and admits those who have passed to a special class of membership. The examination is in two parts, and exemption from the first part is granted to those who hold the diploma of brewing of the University of Birmingham. The Institute of Transport (founded in 1917, charter in 1926) and the Institution of the Rubber Industry (founded in 1921), in contrast to the building and brewing institutes, are concerned with industries founded upon many crafts. They both hold examinations but with different aims. The former conducts examinations in the economics, law, and operation of transport, and aims at promoting the study of the institutional aspect of the industry which is a matter of concern to all in it, whatever their special craft, if any, may be. The latter, on the other hand, examines in the special applications of physics, chemistry, and engineering to the production of rubber.

The entry of organizations based on industry into the field of activity characteristic of professional associations, though as yet on a small scale, is matter of some interest and raises problems which will come up later for consideration. In relation to what has gone before, it is now appropriate to refer to the Institute of Industrial Administration, founded in 1922. Its objects are (1) to formulate 'the requirements and standards of knowledge,

¹ *The Institute of Builders. A Summary of its Position in the Building Industry*, p. 5.

training, conduct, and experience whereby industrial administration may be exercised as a profession'; (2) to raise 'management to the status of an organized profession'; (3) to encourage 'the maintenance of appropriate professional standards'. In the opinion of the Institute 'it is obvious that the natural endowments of personality, force of character and gifts of leadership are indispensable adjuncts to a maximum degree of success in an industrial career; but they can best be directed and enhanced by a system of training at once comprehensive and authoritative, as is evident in every other profession'.¹ It may be said that a group of men belonging to the directorate, believing that there is a technique of business administration common to all business, has set up an organization to test competence by means of examinations. The recognition of the new technique and the attempt to conduct tests in it have come from above, and therefore the body set up falls within our definition of an industrial institute. It is too early yet to say what prestige is likely to attach to the diploma of the Institute. There is certainly no easily recognizable technique capable of appreciation by the business world. Further, it is one thing to obtain prestige for a certificate in a highly concentrated industry, such as banking, insurance, or even transport, and quite another when the whole industrial world is in view.²

¹ *The Institute of Industrial Administration. Objects, Membership, Qualifications, and Training*, p. 7. In 1931 a department of Business Administration was opened at the London School of Economics which offers a two years' course.

² Mention may be made of another body which has little more in common with the organizations just described than the fact that it has taken the title of Institute. The members of the Royal Sanitary Institute, founded in 1875, include doctors, engineers, municipal officers, and others interested in hygiene. It is more than a study association with a strong practical bearing, because as early as 1877 it set up examinations to meet the need for sanitary officers who were required to carry out the Public Health Act of 1875. Its examining work has been greatly developed, and examinations are now held for health visitors, maternity and child-welfare workers, inspectors of meat and others, as well as for sanitary inspectors. Moreover, some of its certificates have received government recognition, and it may be said that it has become a semi-official government body for certain purposes. Since it is possible for the Ministry of Health to exert pressure upon local authorities by refusing grants in respect of the salaries of certain officials, health visitors for instance, unless they possess a given certificate, and since the Ministry has selected the certificate of the Institute for this purpose, the status of the certificate has been much enhanced. In fact the Institute has come to hold the only key to the gate giving entrance to certain occupations. The sequence of events in this case is somewhat unusual. New vocations were created by statute; the government, however, took no steps to test for competence. A study society with strong practical interests stepped in and took up the task; and when the government decided to interest itself in testing, it used the existing mechanism. But this mechanism was not, as in the case of, let us say, pharmacy, a professional association.

THE LIMITS OF THE SURVEY

THE task proposed for the first Part of this book was set out in the Introduction. It was stated to be a review of those vocations which by common consent are called professions, together with others which claim that title or whose organization or other characteristics resemble in some degree those of the acknowledged professions. That task is now complete, and the way is open for an examination and an appraisal of professionalism. But before this is taken up it is necessary to defend our procedure. Why should the survey stop here? Why have we gone so far? Why have we included some vocations and excluded others?

If we had proposed a test whereby those vocations which are professions could be distinguished from those which are not, these questions would not be asked. But we have not proposed and do not believe that there is such a test. It is not merely that any dividing line must be arbitrary. It is that the drawing of a line, which though arbitrary is clear, presents great difficulties if it is not impossible. Nevertheless the term profession, as emphasized in the introduction, clearly stands for something. That something is a complex of characteristics. The acknowledged professions exhibit all or most of these features; they stand at the centre, and all around them on all sides are grouped vocations exhibiting some but not all of these features. It will be a sufficient defence of our procedure to note very briefly the characteristics of those vocations occupying the central position, and then to observe that the remainder of the vocations dealt with here approach this position more or less closely on various sides.

The ancient professions of law and medicine stand near the centre. The practitioners, by virtue of prolonged and specialized intellectual training, have acquired a technique which enables them to render a specialized service to the community. This service they perform for a fixed remuneration whether by way of fee or salary. They develop a sense of responsibility for the technique which they manifest in their concern for the competence and honour of the practitioners as a whole—a concern which is sometimes shared with the State. They build up associations, upon which they erect, with or without the co-operation of the State, machinery for imposing tests of competence and enforcing the observance of certain standards of conduct. Material considerations of income and status are not neglected, but the distinguishing and overruling characteristic is the possession of a technique. It is the existence of specialized intellectual techniques, acquired as the

result of prolonged training, which gives rise to professionalism and accounts for its peculiar features. In speaking thus of the typical professions no judgement is implied. The interest in the technique may be misguided and the responsibility to clients may be misconceived; the evaluation of these activities waits upon further analysis.

Techniques may be either scientific or institutional; the former are founded on the knowledge acquired by the study of a natural science, while the latter, of which law is an example, are based upon the study of human institutions. In some cases, actuarial science for instance, both elements are present. The technique may also be in part aesthetic; an architect differs from an engineer because he is trained to formulate a constructive principle to aesthetic ends. If we ask what are the characteristics of the techniques practised by the typical professions, we may perhaps say that they are founded upon a basic field of inquiry. In the academic world these fields are universally recognized, at least on the scientific side. Doctors, dentists, and veterinary surgeons study not merely the methods derived from biological inquiry but biology itself or at least certain of its branches. Dentists, for instance, do not merely learn how to put in fillings and make false teeth; they study general biology and in particular the structure, physiology, and pathology of teeth. Nurses and midwives, on the other hand, are concerned only with the applications of science. This distinction, none too sharp even when the technique is scientific, is less clear when the technique is institutional.

Putting the point aside, it is at least apparent that some of the vocations described are situated at so far a distance from the centre, in respect of the quality and quantity of the technique, that they hardly come into the picture. That is the case at present with the merchant navy, colliery managers, nurses, midwives, opticians, pharmacists, secretaries, banking, insurance, and journalism. Stockbrokers and produce brokers, indeed, do not come into view at all in this section of the field since they have no intellectual technique. But there is another aspect of technique which is of significance. The more its practice is likely to arouse a sense of responsibility, the closer will be the approach of the vocation to the centre, whatever the nature of the technique may otherwise be. Practice which involves direct and personal relation to clients evokes a special feeling of responsibility, and on that account nurses and midwives make an advance inwards. In general the salaried status implies that there is no such direct relationship, and on that account it has been doubted whether any but fee-takers can be professionals. But that is to exaggerate one

element, and not the most important element, in the complex of characteristics which mark out a profession. Again, the sense of responsibility is called forth when the practice involves personal judgement, and the degree to which judgement is needed does not vary directly with the degree to which there is personal relation to clients. Thus journalism, in which judgement is called forth, is capable of evoking a feeling of responsibility out of proportion to the technique involved and in spite of the indirect relationship to clients.

This mention of responsibility calls to mind teaching and public administration. By common consent they are classed as professions, and nevertheless the technique is ill defined. The training, at least of the higher ranks, is intellectual, prolonged, and based on the exploration of recognized fields of study, but it is generalized. The circumstances, however, under which the practitioners render their services are such as to evoke a very marked sense of responsibility. In the case of teachers there is direct relationship to clients, but in the case of public administration the position is much as in journalism, except that the State is the master and not a private employer. It must be recognized therefore that, while a specialized intellectual technique is the essence of professionalism, this is because it gives rise to certain attitudes and activities. These are also occasionally found fully developed in the absence of a technique of this nature, and when they appear we must recognize that the place of the vocation is near the centre of the field.

It was mentioned above that it is a characteristic of the recognized professions to form associations, among the chief objects of which are the testing of competence and the maintenance of an ethical code. It is therefore a matter of interest when we discover among vocations, which in other parts of the field show some signs of approaching towards the centre, associations of a like constitution and with comparable objects. Such associations are found among shipbrokers. It was mentioned above that the State in some cases has co-operated with and assisted a profession in the furtherance of these objects. A form of organization is brought into being which includes a register and other now familiar institutions. In certain instances, however, the State has intervened and imposed a similar form of organization upon workers not previously recognized as professional. Where, in the vocations affected, there is already some approach to the professional type, these vocations assume added interest. Thus nursing, midwifery, pharmacy, the merchant navy, and mine management have a claim to come within the circle that is not apparent when state regulation is left out of view.

Reference was also made to the mode of remuneration among typical professions. It was said that the remuneration for services rendered is fixed and is therefore by way of fee or salary and not by profit. Apart from rare cases, as where a doctor sells drugs or a dentist sell dentures, pharmacists and opticians form the only exceptions to this rule. It is important to observe that the rule which is not broken is that the amount paid for the service is known to, or is at least ascertainable by, the client. It has been asserted that in the professional world there is no 'exploitation', by which is apparently meant that no true professional employs any other qualified professional while himself taking the fee for the services rendered. This is an entire misapprehension; doctors and solicitors to some extent, architects, accountants, and others to a great extent, employ qualified persons, and in these cases, though the client knows what he pays, he may not know to whom the payment ultimately goes. In the business world when goods are purchased, the client does not know how much he is paying for the services of working upon or of transporting the goods and how much for the material which passes, because payment for both is inextricably mixed together. The question arises whether there is some incompatibility, which cannot be resolved, between remuneration by profit and admission to the professional circle. The question need not detain us here because in fact the only profit-takers with a specialized intellectual technique are pharmacists and opticians, at least at the present time. The answer to be returned to others, should they appear and knock at the door, can be deferred until we deal with speculative matters.

Our concern at this point is not with theory or speculation. We have to justify our procedure and defend it against the criticism that we have selected certain vocations for mention and have excluded others. The defence is that there are groupings, ill defined it is true but none the less important, in the field of social studies. The professional group is one among many, and we have described those vocations, which are typical of the group, together with others selected because they show some attachment to the group. It is the case that some of the vocations mentioned are attached to the group by a single thread; they have been described because it is desired to throw light upon this particular bond. The survey is not exhaustive because our object is to throw light upon the nature of the group and not to define its boundaries.¹

¹ If we had to define a profession we should find it difficult to improve the definition given by the *O.E.D.*: 'a vocation in which a professed knowledge of some department of learning or science is used in its application to the affairs of others or in the practice of an art founded upon it'.

II

PROFESSIONS BEFORE THE INDUSTRIAL
REVOLUTION

By common consent certain vocations now rank as professions; others approach more or less closely to this type. Many of these vocations have arisen in modern times, while others are ancient. Ancient as some may be, not all the characteristics which they now show were fully developed in past times. When speaking of professions in the Middle Ages, we have in mind those vocations which, whatever their status and characteristics at that time, ultimately assumed features which entitle them to take rank in the professional class.

Looking back for signs of the emergence of these vocations, our attention rests upon the eleventh century when a great movement towards association began to sweep like a wave over the cities of Europe. Reaching this country somewhat later, the movement led to the formation of associations round many aspects of social life, and among them the performance of specialized functions and the carrying on of specialized crafts. This corporate spirit 'had become universal amongst all classes of dwellers in cities before the end of the fifteenth century. The clergy, regular and secular, of all grades; the legal, medical, and teaching professions; the merchant, the shopkeeper, and the craftsman; the persecuted alien and the despised water-bearer—were all entrenched behind the bulwarks of professional association.'¹ In this country, shortly before the year 1200, teachers and students, 'after the manner of medieval traders and craftsmen, banded themselves together into exclusive societies which may fairly be described as gilds of learning'.² In this manner the universities arose. In all such associations, of which the universities were but one example, it was a rule that no one should practise the craft without formal licence, and 'the possession of a university degree was originally nothing else than the possession of a diploma to exercise the function of teaching'.³

The universities were not ecclesiastical in origin, but they soon came under the domination of the Church, as was inevitable in an age when theology occupied so large an amount of the attention

¹ G. Unwin, *The Gilds and Companies of London* (1908), p. 172.

² H. C. Maxwell Lyte, *History of the University of Oxford* (1886), p. 5.

³ *Ibid.*, p. 6, quoted from Mullinger, *The University of Cambridge*, p. 78.

of learned men and when the administration of the country was predominantly in clerical hands. Students and teachers entered the ecclesiastical order; every student was a clerk and took the tonsure. Later a student might advance further in the ecclesiastical hierarchy and take minor and major orders, though he did not always do so. It thus came about that 'in the early Middle Ages it was a matter of course to regard all men of education as clerks. Writing and accounting were rare gifts for a layman, the more so since all letters were written and all accounts kept in Latin'.¹

The earliest phases of certain vocations, which have grown into professions, were in consequence passed within the Church. Education was so closely bound up with ecclesiastical functions that the priest and the teacher were distinguished with difficulty. Lawyers, physicians, and civil servants were members of the ecclesiastical order who had assumed special functions. 'To the great mass of the younger students the university was simply the door to the church; and the door to the church at that time meant the door to professional life.'² But it was not merely that entry to the professions was by way of the Church; maintenance and promotion within the professions was also by way of ecclesiastical preferment.

'Nearly all the civil servants of the Crown, the diplomatists, the secretaries or advisers of great nobles, the physicians, the architects, at one time the secular lawyers, all through the Middle Ages the then large tribe of ecclesiastical lawyers, were ecclesiastics. It is true that clerkship did not necessarily involve even minor orders. But, as it was cheaper to a King or a Bishop or a temporal magnate to reward his physician, his legal adviser, his secretary or his agent by a canonry or a rectory than by large salaries, the average student at Oxford or Paris—however little he might be looking forward to priestly duties as the real work of his life—generally contemplated holy orders as his eventual destination.'³

¹ T. F. Tout, *The English Civil Servant in the Fourteenth Century* (1916), p. 11.

² H. Rashdall, *The Universities of Europe in the Middle Ages* (1895), vol. ii, p. 696.

³ *Ibid.* It would appear, generally speaking, that those who contemplated a professional career went no further up the ladder of the ecclesiastical hierarchy than was necessary to enable them to hold the benefices which they desired to obtain. By canon law, minor orders were sufficient to enable a clerk to hold a benefice without the inconvenience of being bound to the recitation of the canonical hours, though the incumbents of benefices with cure were compelled to take priests' orders within a year after attaining the proper age. However, dispensations were very freely given to clerks in the service of the King or magnates and to students in the universities. Many canonries could be permanently held by deacons or sub-deacons. (*Ibid.*, p. 697, note.)

While it would be true to say that at one time most specialized functions which could be called professional were performed by ecclesiastics, it is not true of the fully developed medieval system. In our description of the legal profession mention has been made of the place assumed by the study and administration of the common law in this country. The early history is very obscure; but there is evidence that in early times ecclesiastics were prominent in this sphere. By the middle of the thirteenth century they had been 'finally banished from the common bar and bench', though even after this date it is probable that 'the bar was often recruited from clerks educated at the Universities and at times in minor orders'.¹ Whatever the true state of the case may have been in early times, it is a fact that at the beginning of the fifteenth century the Inns of Court were fully established and had presumably come into being during the preceding century. These important medieval institutions were wholly secular, and the common law was thus in full medieval times entirely divorced from the Church. Their position may be roughly described as midway between the universities and the craft gilds. On the one hand they 'were in fact what they were sometimes expressly called, a University of English Law'.² On the other hand the Inns closely resembled gilds in respect of the manner in which they regulated their craft. Much the same may be said of surgery; whatever part ecclesiastics may once have played, the surgeons were organized in a secular gild in the fourteenth century. The apothecaries were not at that time to be distinguished from grocers; at a later date they obtained separate incorporation. The scriveners, who included notaries within their ranks, were also organized in a gild. Thus the earliest form of organization among surgeons, apothecaries, and notaries, and in a certain sense also among common lawyers, took the shape of secular trading gilds. These professions, therefore, unlike physicians, civil servants, and teachers, did not emerge out of the clerical order.

The next phase in the history of these vocations was conditioned by the changes undergone by the Church and the gilds. With the exception of teaching, those professions which had grown up within the Church became secularized. The process of secularization was complete by the end of the sixteenth century. An Italian observer of English conditions in the reign of Henry VII said that 'the clergy are they who have supreme sway over the country, both in peace and war'.³ A hundred years later the position was changed.

¹ Ibid., p. 696, note.

² Ibid., vol. i, p. 260.

³ H. D. Traill and J. S. Mann, *Social England* (1902), vol. ii, p. 645.

Notable men such as William Cecil, Nicolas Bacon, Roger Ascham, Thomas Smith, Walter Mildmay, and Francis Walsingham were laymen. This transformation was only in small part due to the growth and consolidation of these vocations; it was not so much that they burst the bonds which bound them to the Church, as that the Church receded. The tonsure was abolished, and the university student no longer put his foot automatically upon the first rung of the ecclesiastical ladder. If later in life he wished to enter a professional career, he met with no incentive to take orders. The break-up of the medieval corporations and the passing of wealth into private hands meant among other things that he could earn an income otherwise than through the holding of an ecclesiastical benefice.

The foundation of the Royal College of Physicians did not mark a severance of the profession of physic from the Church. The presidents and prominent members of the College during the sixteenth century were mostly in orders.¹ The link between the College and the Church was maintained for some time because the members were almost all university graduates, many of whom were elected to fellowships which they desired to retain. Gradually, however, the physicians found that the amenities of college fellowships did not compensate for the burdens attaching to holy orders, and the link was broken. In the civil service there was some degree of secularization before the Reformation. In the reign of Edward III laymen began to press for a share of posts monopolized by the clergy. But 'the lay chancery clerk only came in with the Tudors'.² The prolonged dominance of ecclesiastics in the civil service was of great importance because 'medieval England, down to and including Tudor times, was ruled, like the modern German Empire, by ministers who had made their mark in the civil service of the Crown'.³ The process of secularization can be traced in the history of the various offices. The appointment of Sir Thomas More in 1529 broke the almost continuous series of clerical Chancellors; after him there were three clerical holders, but since the appointment of Sir Nicolas Bacon in 1559 there have been only lay Chancellors. Until 1371 the Lord High Treasurer had usually been an ecclesiastic; in that year Lord Scrope was appointed. In the fifteenth century there were six clerical holders: Juxon (1582-1663) was the last ecclesiastic to hold this office.

As we have seen the secularization of the common lawyers was complete long before the sixteenth century. With the recession of

¹ See W. Munk, *Roll of the Royal College of Physicians* (1861).

² T. F. Tout, *op. cit.*, p. 23.

³ *Ibid.*, p. 18.

the Church in that century went automatically the decline of the canon lawyers. The number of those learned in the civil law also diminished, since it was to that study that clerks trained in universities, who aspired to a career in the civil service, were mostly devoted. Thus in the sixteenth century the already secularized common lawyers came to represent almost the whole body of lawyers. The lawyers did not confine themselves to the practice of their art. Not only did members of the Bar early manifest their well-known interest in politics, but attorneys and solicitors were often found in occupation of various administrative and managerial posts. The steward of the Elizabethan age was 'usually a lawyer',¹ and we may draw a parallel between the law in this age and the Church in former times. Prospects of these appointments 'must have led to the legal education and eventual prosperity of many a child of the soil, and have exercised a social influence akin to the ordination of villeins in an earlier age'.² The door into the legal profession was not closed to those who were not gentlemen, and the legal profession itself was the door to certain posts of an ill-defined but semi-professional nature.

It is perhaps true to say that, with one exception, such specialized vocations of a professional nature as came into being after the Reformation and before the industrial revolution were filled by lawyers. The exception is architecture:

'During the seventeenth century a very significant change took place in architectural design. All through the medieval period design seems, so far as our knowledge enables us to form an opinion, to have been impersonal, the result of a number of men working together, each concerned with the portion affecting his particular trade. It is probably true that some one individual controlled the general scheme, and gave an oversight to the work of the others; but not in such a sense as to have been entitled to be called the "architect" as we understand the term.'³

In the seventeenth century traditional design was abandoned and foreign styles were copied. The conceptions imported from abroad included the designing of a building as a whole in such a fashion that any departure from the plan would mean ruin. Thus came the need for architects, and the men who arose to supply the need were those who had made a special study of foreign models, often while travelling abroad.

Alone among the professions which had grown up within the Church, teaching remained in clerical hands long after the

¹ H. Hall, *Society in the Elizabethan Age* (1901), p. 17.

² *Ibid.*, p. 18.

³ J. A. Gotch, *The English Home from Charles I to George IV* (1918), p. 25.

Reformation. The foundation of dissenting academies, of which the Warrington Academy was perhaps the most famous, marks the first invasion of the monopoly of the Established Church. But these academies were under religious control, and it was not until the last century that laymen began to obtain some of the more important posts under lay control in the teaching world. The custom of appointing none but clerics to the headmasterships of the public schools gradually broke down, and by slow steps fellows of colleges were freed from the obligation of taking orders.

About the same time that the recession of the Church hastened the secularization of the physicians and civil servants, the trading community began to free itself from the dominance of the gild form of organization. The increase in the size of the market, the accumulation of capital, and other factors brought about its downfall. But the gilds of surgeons, apothecaries, and scribes did not suffer the common fate. The surgeons and the notaries were not engaged in trade; they were rendering personal services, and they did not need capital. The same is true of the apothecaries in so far as they were prescribing and not merely compounding medicines. The gild organizations of surgeons and apothecaries were elaborated and strengthened, as the professional techniques developed, and proved capable of meeting the needs of the practitioners. They retained their vitality; and, though they have been profoundly altered by the accumulation of small changes, they remain the professional associations of surgeons and apothecaries to-day.

PROFESSIONS SINCE THE INDUSTRIAL REVOLUTION

Writing early in the eighteenth century Addison spoke of the 'three professions of divinity, law, and physic'.¹ Divinity found a place in the list because it was at one time either the only profession or the basis on which other professions were built. It took its place with physic and the law, as it were, by ancient right. Men had not observed that, since it had divested itself of duties relating to the ordinary business of life, its position in the list was anomalous. The omissions are more interesting than the inclusions. Surgeons and apothecaries are not mentioned, and this is because they were not vocations 'fit for gentlemen'. At this time and throughout the eighteenth century, the professions were regarded first and fore-

¹ Quoted by the *O.E.D.* under 'Profession'.

most as gentlemen's occupations. Though they might not offer large material rewards, they did provide a safe niche in the social hierarchy. Teachers were omitted because such of them as could claim to be gentlemen were included in the Church. Architects and civil servants had not come to form self-conscious groups; there was no organization among architects for another century. The attention of the public is called to the existence of a profession through its professional association, and public recognition can hardly be accorded to a group that has not discovered itself.

The opinions held in the eighteenth century about professions are not irrelevant because they have lingered on to our own day and still colour our views to some extent. The idea that professional men are persons in possession of a specialized intellectual technique was present in the earlier centuries and can be detected, for instance, in the writings of Bacon. The notion that professions were occupations staffed by gentlemen, who had an exclusive right to enter them, was a passing aberration.¹ A deeper analysis reveals the nature of professionalism, and a wider view shows that for several centuries some half-dozen professions provided all those skilled intellectual services upon which the day-to-day functioning of society depended. By 1700 the architects had come in, and the eighteenth century witnessed some further changes. Then the flood-gates opened. New vocations arose and filled the ears of the public with demands for places alongside the ancient professions.² What was it that released the flood?

¹ When Anthony Trollope wrote the following passage in the *Vicar of Bullhampton* (published in 1870) he evidently intended to convey that Miss Marrable's views were old-fashioned:

'She [Miss Marrable] always addressed an attorney by letter as Mister, raising up her eyebrows when appealed to on the matter, and explaining that an attorney is not an esquire. She had an idea that the son of a gentleman, if he intended to maintain his rank as a gentleman, should earn his income as a clergyman, or as a barrister, or as a soldier, or as a sailor. Those were the professions intended for gentlemen. She would not absolutely say that a physician was not a gentleman or even a surgeon; but she would never allow to physic the same absolute privilege which, in her eyes, belonged to law and the church. There might also possibly be a doubt about the Civil Service and Civil Engineering; but she had no doubt whatever that when a man touched trade or commerce in any way he was doing that which was not the work of a gentleman. He might be very respectable, and it might be very necessary that he should do it; but brewers, bankers, and merchants were not gentlemen, and the world, according to Miss Marrable's theory, was going astray, because people were forgetting their landmarks.'

² To illustrate the position when the multiplication of professions was beginning, a search was made through the letters A and B in Holden's *Triennial Directory of London* for the year 1799, and the following table shows the number of entries found under headings which suggested the performance of functions similar to those considered in this study. It is worth drawing attention to the absence of a single physician. They were few in number, and the name

From about the middle of the sixteenth century there had been a movement at work which was destined to bring new professions to birth. In 1543 Copernicus and Vesalius, one at the end and the other at the beginning of his career, each published a book now famous in the annals of science; on that account this year is sometimes taken as marking the opening of the scientific age. The spirit of free and original inquiry gained a firm hold in the seventeenth century and led to systematic research. Pure research was thereafter pursued for itself, though few workers were oblivious of the possibilities of its practical application. But for some 200 years the scientific movement made so few additions to the arts that it exerted little influence upon the existing professions and brought no new professions into being.

Pure and systematic research was not the only result of the scientific movement. It also stimulated invention; men faced by practical difficulties were led to look for means of overcoming them. This search was often conducted by persons without training or interest in pure science, and it was such men who were the first to make important improvements in the mechanical arts. Military engineers brought traditional skill to their assistance, and some men of science descended into the arena of practical problems. From these sources, but mainly from the first, the art of civil engineering was derived. It was the practice of this art which wrought changes so catastrophic in the material conditions upon which society rests that the term revolution has been applied to that age when the civil engineer first made his appearance.

In the earlier phases of this revolution the inventor, whose fund-
of no physician began with either of the first two letters of the alphabet. It may also be noted that three of the apothecaries described themselves as 'apothecary and chymist', that one of the opticians described himself as an 'occulist' (though it is fairly certain that the distinction now drawn between these terms was not drawn then), and another as an optician and mathematical instrument 'maker', that one of the auctioneers appears as an 'auctioneer and upholsterer', and one of the accountants as an 'agent and accomptant'.

<i>Profession.</i>	<i>Number.</i>
Barristers, special pleaders, &c.	83
Attorneys, proctors, notaries, &c.	281
Physicians	—
Surgeons	58
Apothecaries	32
Chemists and Druggists	34
Dentists	4
Opticians	8
Architects	1
Surveyors	20
Auctioneers	18
Accountants	2

mentally scientific but untrained mind was bent upon practical problems, led the way in the founding of new crafts upon which professions were built. As time went on, new crafts came to be built more directly upon science. The growth of interest in pure science was coincident with the desire to solve practical problems, and when research had progressed to a certain point application became possible. If circumstances are propitious, the interest in pure research, once aroused, does not fade away, and scientific investigation proceeds by its own momentum, making possible from time to time the origin of new professions. Chemistry began to be applied about the middle of the last century and physics within the present century; professional chemists and professional physicists thus came into being. Veterinary surgeons and dentists also arose to apply new arts made possible by the progress of research, and the sub-crafts in the engineering world originated in the same fashion. The outline of the story of the evolution of the professions based on science is not difficult to discern; the moment when application of knowledge becomes possible depends, in the first place upon the progress of research, and in the second place upon changes in social and industrial organization, since it is sometimes the case that knowledge cannot be employed because organization has not been sufficiently advanced.

The rise of new professions based upon intellectual techniques is due to the revolution brought about by the work of the engineers and thus indirectly to the coming of science. The engineers made possible large-scale industrial organization. Large-scale industrial organization creates the need for accountants, secretaries, a highly developed system of banking and insurance, and the services of brokers. A further result of the revolution was the putting of landed property to new uses; and consequently the appearance of surveyors, auctioneers, and estate agents. Large-scale industrial organization implies large-scale social organization, and hence the need for a local government service. The organizing activities of the State are aroused and call new techniques into being; the merchant navy and mine managers are thus added to the list. As in the case of the emergence of professions based on science, so in the case of the institutional professions, not only must the technique be ready for application, but the surrounding conditions must permit it. The course of legislation plays no small part in the creation of the necessary conditions, and the appearance of secretaries and accountants at a particular date may be traced to the enactment of particular statutes.

THE RISE AND AIMS OF PROFESSIONAL ASSOCIATIONS

THUS far our attention has been concentrated upon the origin of those techniques round which professions are built. But a technique may exist and men may practise it, and yet there may be no profession. Just as a number of families in primitive society do not form a State, so a number of men, though they perform similar functions, do not make a profession if they remain in isolation. A profession can only be said to exist when there are bonds between the practitioners, and these bonds can take but one shape—that of formal association.

When that powerful impulse towards association was manifesting itself in the Middle Ages, those who practised a particular craft usually came together with ease. The barristers and surgeons formed their own associations, but the other medieval vocations which we have mentioned were not in a position readily to do so. The physicians, for instance, were members of the Church and of the university, and for a long time had no thought of setting up their own association outside these institutions. When a new profession evolves within an existing profession, as at a later time dentistry evolved within medicine, the practitioners of the new craft usually remain for a time in the shelter of their ancient home, and in consequence the segregation of the new profession is delayed. The civil and canon lawyers, the teachers and the civil servants were in a like situation. The two latter professions in addition, as has already been noticed, possess no specialized technique and therefore lack that incentive to association which has proved in the case of other professions to be of such great importance.

In the Middle Ages there were but few techniques round which professions could be built, and association was impeded in some cases by the various obstacles mentioned. When it occurred, it took the shape characteristic of the times. Since it was thought necessary 'to curb the audacity of those wicked men who shall profess medicine more for the sake of their avarice than from the assurance of any good conscience'¹ the Royal College of Physicians was incorporated. The College was to 'discourage the unskilfulness and temerity of the knavish men mentioned'.² The members were given certain privileges and in addition were to have 'the oversight and scrutiny, correction and government of all and singular physicians' of London, and 'also the oversight and scrutiny of all

¹ *The Charter of the Royal College of Physicians of London* (1518).

² *Ibid.*

manner of medicines'.¹ Under an Act of 1540 the four Censors of the College were given power to enter apothecaries' houses, to examine drugs, and to destroy them if defective. The College had thus many functions, and it was characteristic of the times that powers and duties of so extensive a nature were granted to vocational associations that they may be regarded as organs of the State.

The new social and economic forces, which began to manifest themselves in the sixteenth century, were antagonistic to the ancient forms of association, and created conditions which, for more than two centuries, were unfavourable to the rise of new forms. The old bonds dissolved, and the medieval associations, for the most part, decayed; no place was found for them in the social and political philosophy of the time. Early in the French Revolution, which gave expression to the views prevalent in the eighteenth century, associations of members of the same trade or profession were forbidden. 'Les citoyens de même état ou profession, les ouvriers ou compagnons d'un art quelconque ne pourront lorsqu'ils se trouvent ensemble, se nommer de président, ou secrétaire ou syndic, tener des registres, prendre des arrêtés, former des règlements sur leurs prétendus intérêts communs.'² The new forces did not attack directly the ancient associations of physicians, lawyers, surgeons, and apothecaries; they struck with full force at the trading guilds which passed out of the scene, while the former survived though with diminished vitality. In the prevailing atmosphere associations aroused no enthusiasm and little loyalty; they became instruments for the safeguarding of privileges and the enthroneing of abuses. The conditions at Oxford and Cambridge in the eighteenth century are familiar, and the Royal College of Physicians and the Inns of Court were in much the same case.

About 1739 a number of attorneys and solicitors founded the Society of Gentlemen Practisers in the Courts of Law and Equity. The Society 'took its origin in friendly and convivial meetings'³ and ultimately gave rise to the Law Society of to-day. Towards the end of the century the civil engineers, to whom we may attribute a large share in bringing about the industrial revolution, also experienced a desire to meet together periodically, and they formed a dining club. They mingled social activities with informal but

¹ Ibid.

² Law of 14th June, 1791. Quoted by Marten Saint-Léon, *Histoire des Corporations et Métiers* (1897), p. 624.

³ *The Records of the Society of Gentlemen Practisers in the Courts of Law and Equity* (ed. Edwin Freshfield, 1897), p. i.

serious discussions of their common problems. This was the beginning of a new wave of professional association, entirely spontaneous and aroused by needs that were deeply felt. The importance of the step taken by the attorneys, solicitors, and engineers was apparent neither to them nor to observers outside their group. Opinion was then, and long remained, hostile to professional association as it was then understood. Physicians and barristers were regarded as typical of professional men, and their societies were active only in opposition to movements towards reform.¹ The exclusiveness, selfishness, and slothfulness of their fossilized corporations were the target of reformers for more than half a century after the new wave of association had set in. The critics may not have been in error in their immediate aim, but they went on to generalize from these few examples and condemned all professional associations. They inferred that the abuses then prevalent were inevitable. These hostile criticisms gained a wide popularity owing to the work of satirists such as Dickens; to most men, barristers and public servants recalled Jarndyce and Jarndyce and the Circumlocution Office, and the influence of Dickens may still be traced in the opinion of to-day.

The new wave of association took some time to gather strength; certain features in the situation were opposed to it. The eighteenth century was the century of patronage, and to patronage civil servants, the early solicitors, and architects were subject. Men who are in that condition of personal subservience do not easily associate with their fellows.² Association might seem to indicate a striving towards an independence that would be incompatible with the relation of client to patron. Again, in some cases, contracting had not been divorced from professional duties; the local government servant was part expert adviser and part contractor. So too was the architect. So long as contracting is present, the business outlook dominates over the professional outlook, and the professional functions are not prominent enough to form the basis of association. With the passing away of these obstacles, associations readily sprang up round the new techniques. The immediate

¹ It is worthy of note that the barristers never constituted a caste as did the physicians. 'A legal career was open to the ambitions and talents of the poorest, and it led to the very highest positions in society.' (E. Halévy, *A History of the English People in 1815* (1924), p. 19.)

² At an earlier date the dependence of solicitors upon patrons stood in the way of their amalgamation with attorneys. At a later date the segregation of land agents was impeded by a similar condition of dependence. At the present day the dependence of secretaries and mine managers, though it is a dependence upon companies and not upon persons, has the result that they adopt much the same attitude to companies as architects used to exhibit towards their patrons.

motive was the desire for social intercourse with those who were doing the same work and facing the same problems. Association took the shape of dining clubs where 'shop' was talked, and it was but a short step to the holding of formal meetings for the reading and discussion of papers. Thus the desire to promote 'study' activities was among the first objects of these societies.

Study societies form by far the largest class among the societies to which the new wave of association has given rise, and most of them have originated among those who have in common only the desire to promote the study of some field, historical, archaeological, or whatever it may be. Their objects extend no further than discussion, research, and publication in the chosen field. Pure study societies are not professional associations, and until the dining clubs enlarged their activities they could not be called by this latter term. But members of these clubs had more in common than the study interest. They were applying the same technique in the ordinary business of life; they called themselves civil engineers, architects, and so on. To them these titles indicated men who had attained to a certain degree of competence in their own sphere. But the public accorded these titles to any one who laid claim to them, whether competent or not, and in consequence the skilled practitioners came to desire that the competent should somehow be distinguished and protected. It was hoped to achieve this end by limiting admission to the clubs to those who could show evidence of competence, which in those days meant evidence of experience and accomplishment. In this way prestige would be attached to the members of these clubs or associations. They, and they alone, would be the true civil engineers or architects as the case might be. A passage from the *Pharmaceutical Journal* of 1848, that is only four years after the foundation of the Pharmaceutical Society, when the circumstances leading to that event were fresh in mind, reads as follows: 'The Pharmaceutical Society was designed as a means of raising the qualifications of pharmaceutical chemists and placing between them and unqualified persons a line of demarcation.'¹ The next step is to raise the standards of competence and to improve the methods of testing them. 'It may be,' said the President of the Institution of Surveyors early in the history of that body, 'a question deserving consideration, with reference to our future, whether the admission of Students to a higher grade should not be accompanied by some sort of examination, so that not only their respectability and character should be secured, but that some degree of guarantee should be given to the

¹ *Pharmaceutical Journal*, vol. vii (1848), p. 156.

public that they are not unfitted for the work of protecting the interests entrusted to them.'¹

Just as the public may fail to distinguish between competent and incompetent, so it may fail to distinguish between honourable and dishonourable practitioners. Therefore the competent and honourable practitioners are moved mutually to guarantee not only their competence but also their honour. Hence the formulation of ethical codes. It is hoped that the public will come to realize that in giving patronage to members of the association they are assured of honest as well as of competent service. In the earliest surviving entry in the minutes of the Society of Gentlemen Practisers we read that 'the Meeting unanimously declared its utmost abhorrence of all male [that is to say, mal] and unfair practice, and that it would do its utmost to detect and discountenance the same'.² In the preamble to the charter of the Institute of Chartered Accountants granted in 1880 it is stated that

'the petitioners further desire and propose that the Corporation should lay down such rules respecting admission to membership and exclusion therefrom, as would prevent Public Accountants from mixing the pursuit of any other business with the discharge of the higher duties devolving upon them as Public Accountants, and as would put an end to the practice, which has been much objected to, of the division of profits with persons in other professions or callings, in the form of commission and the like.'³

The members of the first formed of these societies were very conscious that they had no social prestige and that their occupations were not 'fit for gentlemen'.⁴ Their declared objects nearly always included some reference to the raising of status. When application was made for a charter, it was generally submitted that incorporation in this manner would help to confer the much desired prestige. The petitioners for a charter for the College of Veterinary Surgeons represented that incorporation 'would materially contribute to . . . the respectability of veterinary surgeons', and the charter granted to the College declared that veterinary surgery was a profession.⁵ References to status continue to be found among the objects of associations of later date. One of the objects of the National Union of Teachers is 'to raise the

¹ *Institution of Surveyors: Transactions*, vol. x (1877-8), pp. 1 and 2.

² *The Records of the Society of Gentlemen Practisers* (1897), p. 1.

³ *Charter of the Institute of Chartered Accountants* (1880), preamble.

⁴ When attorneys and solicitors began to associate about 1739 it is perhaps significant that they called their society the Society of *Gentlemen Practisers* in the Courts of Law and Equity.

⁵ *Charter of the Royal College of Veterinary Surgeons* (1844).

status of the teaching profession'.¹ In time, the emphasis changes from respectability and status to protection of interests. It became obvious that a relatively high level of remuneration implies a public recognition of status, and that the most certain way of attaining the latter is to press for the former. Hence protective activities are added to those already mentioned.

The pursuit of these objects by professional associations inevitably leads them to further activities. Their solicitude for education implies that certain aspects of the educational organization of the country are to them a matter of concern. They are led by slow steps along this and other paths into public activities. Because they are repositories of special knowledge and experience, on the one hand they are approached by public and private bodies for help and advice, and on the other hand they are moved to present their views on matters of public policy touching their own special sphere. The later-formed associations usually make mention among their objects of such semi-public activities. It is an object of the National Union of Teachers 'to afford to His Majesty's Government, the Board of Education, the Local Authorities for education and other organizations—public or private—which have relation to educational affairs, the advice and experience of the associated teachers'.²

The professional associations, which arose out of study societies in the earlier part of the last century, first took upon themselves functions relating to the competence and honour of their members, and later included protection of material interests and public activities while retaining study functions. The later-formed associations usually set out all these four aims among their original objects, to which they generally, but not always, added study activities. The associations of the eighteenth and early nineteenth centuries were for the most part simple in constitution, consisting of a single grade of members, perhaps adding, as in the case of civil engineers, a group of honorary members. Thus they contrasted strongly with the ancient corporations which were derived from the Middle Ages and had hierarchical constitutions. Those who founded the College of Preceptors, almost alone among the founders of new associations, consciously imitated the ancient model. The new associations also had, if not a single aim, at least closely related aims, in distinction to the multiple functions of the gilds. But as time passed many of the newer associations underwent a curious transformation and assumed something in the nature of the ancient hierarchical constitutions. The addition of new grades in

¹ *Rules of the National Union of Teachers*, 2 (b).

² *Ibid.*, 2 (e).

the history of the Institution of Civil Engineers has already been traced, and it was so elsewhere. The associations founded within the last half century have mostly been endowed with hierarchical constitutions from birth, and thus have a certain resemblance to medieval bodies. Moreover we may perhaps recognize another resemblance in the most recent development of the public activities of professional associations. The medieval associations were organs of the State, and though there is no sign that modern associations will ever undertake the supervisory duties carried out by the former, their public activities are sometimes such as to suggest that they also merit the same description.

Looking back on the story of the development of professional techniques and on the rise of professional associations, we have seen that evolution does not always proceed smoothly. Allusion has been made to some of the factors which inhibit evolution or divert its course, but there are features of the story which remain unexplained. The evolution of the legal and medical professions was anything but smooth; and something more than has yet been said is required to account for so tangled a history. On reflection it appears that what happened in both cases was the early segregation of practitioners, advocates, and physicians, whose function at a later date was realized to be specialist. But the associations of these specialists, having attained great power and prestige, attempted to inhibit the development of general practitioners of law and medicine of whose services the public had need.¹ When they could not prevent their appearance, they tried to keep them subservient, and the history of both professions is largely concerned with the problems so brought about. By slow degrees the true place of specialists and general practitioners has come to be understood, and in consequence the evolution of their professions has at last been able to proceed in a clearer and calmer atmosphere. It may be that some of the recent professions will have to face the same troubles unless the proper relations of specialists to general practitioners are understood at the outset.

THE INTERVENTION OF THE STATE

ALL those professions, whose ancestry can be traced to the Middle Ages, were subject to regulation by the State. In those times when

¹ The term 'general practitioner' first came into common use in the decade 1820-30 in relation to the profession of medicine. The term is found in the Public Notaries Act of 1801.

the State intervened and granted privileges to, or imposed duties upon, the vocations which have evolved into professions, it followed no principles and employed no methods that it did not use in other spheres. Professions were regulated much as other vocations; professional corporations were treated as other corporations. The objects in view, moreover, when intervention occurred, were many and varied. At one and the same time it was attempted to ensure that persons should be competent in their own line, should deal honestly with their clients and fairly with those of inferior status, and should maintain discipline and undertake supervisory duties. The machinery employed was clumsy and often ineffective. Under the changed conditions of the sixteenth and seventeenth centuries the State gradually ceased to intervene with these objects and in this fashion. The machinery which had been created became an encumbrance, and in the eighteenth and early nineteenth centuries it was swept away or allowed to fall into desuetude. There remained statutes, such as those regulating the medical profession, and charters governing the medical corporations. The former, however, were inoperative, and those receiving privileges under the latter were not performing the duties expected of them.

With reluctance, and after long hesitation, Parliament began to regulate anew. The effort was no longer made to achieve all the several objects at one time and by one method. The story of the attempt to ensure fair dealing, unadulterated materials, proper conditions of work, and just wages is familiar enough. The methods employed did not involve vocational regulation and are therefore irrelevant here. The story of the attempt to ensure professional competence is less familiar. As in other aspects of its regulating activity, Parliament was influenced by purely practical considerations. It became apparent that there must be some guarantee that practitioners of certain professions possess a minimum competence. Therefore Parliament took the only possible step and enacted that there should be a list of practitioners, that only persons of proved competence should get on to the list and that to persons on the list all or some of the professional functions should be reserved. Ancient professions, such as medicine, and new professions, such as patent agency, were dealt with alike, if the nature of the case was such as to demand regulation.

Under what circumstances has Parliament concluded that regulation is desirable? It might have been anticipated that, unmoved by appeals to principles and unmindful of logical consistency, Parliament would have been led, by dealing with each

case on its merits, to intervene in such a fashion that the regulated professions would present no common features. This is not the case. When we examine the list of regulated professions we find that they fall into five groups. There are first those professions where the service rendered is vital. This is the medical group which comprises medicine, dentistry, veterinary surgery, pharmacy, nursing, and midwifery. There are secondly those professions where the service is fiduciary in a marked degree. This is the legal group which comprises barristers, solicitors, and patent agents. There is one important characteristic common to all the professions in these two groups. The potential clientele is everyman; any one may require the services of a practitioner in any of these professions, and the need may arise, moreover, at a moment's notice. It is not every one who requires, even once in the whole course of his life, the services of a surveyor; and those who do so are, for the most part, persons of some education and experience. Further, the need for surveyors is not one that has immediately to be satisfied as in the case of doctors and dentists; there is generally ample time for reflection and selection. Therefore, although a case can be made out for saying that the services of some professions, not now regulated, are in a sense also vital or fiduciary, these professions are distinguished from the regulated professions by the nature of the clientele and the circumstances under which the services are required. Thirdly, there are those professions where the services have an intimate relation to public safety. This group comprises the merchant navy and the mine managers. Fourthly, the State has become an employer and employs professional as well as other workers. In order to ensure the efficiency of its professional servants and to do away with any suspicion of favouritism, it has set up tests of competency. Only those who have passed these tests are employed, and the list of those eligible for employment constitutes what is in effect a register. Civil servants and teachers in grant-aided schools fall within this class. Finally there are the architects and the registered teachers. In the expectation that registration would mean self-government and would confer privileges, an insistent demand was made by these professions for action by the State. After many years of agitation in each case the demand was conceded by Parliament, though with doubt and hesitation.

The intervention of the State and the setting up of a register have had profound effects upon professional associations. Intervention implies that the rules governing admission to and expulsion from a profession are made by bodies with statutory authority.

When a professional association is employed in the mechanism of regulation, it becomes an organ of the State, and, however powerful it may be, it loses freedom. When the professional association is not employed, it can no longer take effective action in relation to admission to and expulsion from the profession, and therefore it cannot include among its aims the first two of the four objects which we have described as characteristic of professional associations. This does not necessarily mean that the profession as a whole can no longer control, or exert effective influence over, professional education and professional ethics, because the regulating body may consist in part of members of the profession. But the effects upon the association are far reaching; it is limited to protective functions and to public activities.

PROFESSIONAL TRAINING AND THE TESTING OF PROFESSIONAL COMPETENCE

THERE is only one other aspect of professional organization the evolution of which it is profitable to trace. It has emerged that special competence, acquired as the result of intellectual training, is the chief distinguishing feature of the professions. The development of training and testing is therefore not the least important part of the history of professionalism.

Training through apprenticeship and testing at the time of admittance to full membership were characteristic of the gild system. In the Middle Ages surgeons and apothecaries, no more and no less than other vocations organized in this way, were thus trained and tested. At the Inns of Court, part gilds and part universities, a more elaborate system prevailed. Some account has been given of the readings or moots which were held every night after supper during term time. This system fell into desuetude during the Civil War and was never revived; nearly two centuries elapsed before legal education was again taken seriously in hand. The arrangements for the education of surgeons and apothecaries underwent no similar dissolution; on the contrary, the surgeons, followed later by the apothecaries, elaborated and improved the loose and informal medieval system. In 1555 regulations were drawn up relating to the examination of candidates for the surgeon's licence to practise. Thirteen examiners were appointed; all candidates were obliged to have some knowledge of

Latin and to bring quarterly 'an epistle'.¹ From this time onwards, as the technique advanced, improvements in the regulations governing the teaching and examining of surgeon apprentices were frequently made. A readership in anatomy was founded in the reign of Elizabeth. In 1629 a weekly lecture was instituted, and in 1734 an order for the regulation of anatomical teaching provided for demonstrators.

The members of most of those medieval vocations, which ultimately grew into professions, were trained in universities. Above the Faculty of Arts stood the four superior Faculties of Theology, Canon Law, Civil Law, and Medicine, and those who studied for a higher degree had usually but not invariably graduated in the Faculty of Arts. Those who proposed to follow the profession of physic or canon or civil law devoted themselves to higher studies, and eventually received the licence to practise which Oxford and Cambridge were empowered to grant from their earliest days. It would lead to misunderstanding to employ the word examination to indicate the tests which were imposed, since they were mostly of the nature of oral disputations on subjects announced beforehand. The type of examination with which we are familiar is of very recent invention.

The training of recruits for the professions was no mere accessory function of the medieval universities. 'Universities, at least in Italy, were above all things places of professional study.'² 'It was not the wont of practical men of the Middle Ages to disparage academic training. The rapid multiplication of universities during the fourteenth and fifteenth centuries was largely due to a direct demand for highly educated lawyers and administrators. In a sense the academic discipline of the Middle Ages was too practical.'³ Bacon was definitely of the opinion that practical studies occupied too prominent a place. 'Among so many great foundations of colleges in Europe,' he said, 'I find it strange that they are dedicated to professions and none left free to arts and sciences at large.' 'This I take to be,' he continues, 'a great cause that hath hindered the progression of learning because these fundamental knowledges have been studied but in passage.'⁴ But English universities were always less practical than those on the Continent, though 'the professorships founded at Oxford and Cambridge, in very ancient times, for the three faculties [of theology, law, and medicine]

¹ J. Flint South, *Memorials of the Craft of Surgery* (1886), p. 115. The regulations affected only that branch of the Barber-Surgeons' Company which practised surgery.

² H. Rashdall, *op. cit.*, vol. ii, p. 50.

³ *Ibid.*, p. 707.

⁴ F. Bacon, *Advancement of Learning—Works*, ed. Spedding, vol. iii, p. 323.

clearly show that an adaptation of the course of study to the future destination of the pupil was contemplated in the original organization of our universities'.¹ Moreover, of the two medieval professions which demanded the most specialized training, the law slipped out of the province of Oxford and Cambridge, while physic never became firmly established. At one time civil and canon law were actively studied, and licences were granted to practitioners in those professions; the common law, however, was neglected, and the Inns of Court arose as places where it was studied and where licences were issued. As the canon law declined in importance with the recession of the Church, and the civil law gave way before the common law, the English universities ceased to be places where entrants to the legal profession made their studies.² Physic was never seriously studied at either Oxford or Cambridge. The Oxford school was 'small and struggling'³ in the fifteenth century, and 'still lamentably weak' in the age of Elizabeth.⁴ The standards were low. In the sixteenth century the Royal College of Physicians became the authoritative body in the world of physic, and was led more than once to protest that the universities were granting medical degrees to men who were insufficiently trained.

By the eighteenth century the Royal College of Physicians and the Inns of Court had ceased to interest themselves in training, and the tests imposed upon entrants were of no value; in the case of the former they were little more than tests of social accomplishments. The surgeons and apothecaries, however, so far from allowing their system of training and testing to decay, were devoting themselves to its improvement. Since these professions were not 'fit for gentlemen', social accomplishments played no part and technical competence was demanded. The universities had almost fallen out of the picture. Long before 1850 Oxford 'had ceased altogether to be a school of medicine' and centuries before that date it had ceased to be a school of law.⁵ They had allowed the never very efficient system of testing to become a farce; the candidate selected his examiners, and the account given by Lord Eldon of his examination in 1770 and of his encounter with Golgotha and Alfred the Great is well known. 'To render a system of examinations effectual,' wrote the Oxford Commissioners of 1852, 'it is

¹ 'The State of the Universities', *Quarterly Review*, vol. xxxvi (1827), p. 229.

² By 1600 Canon Law degrees had lapsed. C. E. Mallet, *History of the University of Oxford* (1924), vol. ii, p. 132.

³ *Ibid.*, vol. i, p. 193.

⁴ *Ibid.*, vol. ii, p. 133.

⁵ *Report of the Oxford University Commission* (1852), p. 71. For conditions at Cambridge see the *Report of the Cambridge University Commission* (1852). 'The general condition of this branch of study is at present at a very low ebb' (p. 81, from the evidence of the Regius Professor of Physic).

indispensable that there should be danger of rejection for inferior candidates, honourable distinctions and substantial rewards for the able and diligent, with examiners of high character, acting under immediate responsibility to public opinion. In the scheme of Laud all these things were wanting.'¹

Since the beginning of the nineteenth century there has grown up a new system of training and testing. The main features of the movement have been the abandonment by professional organizations of the responsibility for providing training, the rise of institutional education, the recapture of part of the field by the universities, and, most important of all, the invention, for it is nothing less, of the modern examination mechanism. Examinations of the type with which we are familiar hang about us almost from our birth. We are apt to regard them as a necessary evil of the flesh, as a kind of primitive curse. But they are modern, and since they are universally used to test the competence of entrants to the professions, the story of their invention demands some attention here.

The modern examination system has two roots. It was elaborated in the universities with the object of raising the standard of education and of improving the diligence of students, and as such has become an integral part of the educational system. At about the same time the same device was evolved outside the universities as a means of testing the competence of those appointed or permitted to undertake specialized or responsible services. The first steps were taken at Cambridge in 1747, 1753, and 1755, in connexion with the mathematical tripos. In 1773 and 1774 John Jebb of Peterhouse propounded a scheme for the annual public examination of all undergraduates. He was no doubt of the opinion that 'the idlest and most careless student is checked in his career of idleness by the approach of his examinations'.² A reform movement in Oxford, headed by John Everleigh of Oriel, Cyril Jackson of Christ Church, and John Parsons of Balliol, resulted in the institution in 1800 of the honours system, in 1807 of 'Greats' as a separate school, and in 1808 of Responsions. These reforms were

¹ *Report of the Oxford University Commission* (1852), p. 60. The 'scheme of Laud' is found in the statutes of 1636 and continued to rule little changed until the nineteenth century. An article on the 'State of the Universities' (*Quarterly Review*, vol. xxxvi (1827)) mentions as one of 'three striking peculiarities, in the system of education in England and Ireland, without parallel in any of the other nations in modern Europe, . . . the virtual exclusion of a regular professional course of study in the faculties of theology, law, and medicine' (p. 218). It should be observed that what is said above does not apply to the Scottish universities at the end of the eighteenth and the opening of the nineteenth centuries. In Scotland the system of professional training was relatively advanced. (See the article in the *Quarterly Review* cited above and E. Halévy, op. cit., *passim*.)

² *Report of the Oxford University Commission* (1852), p. 61.

important because they included the setting-up of a board of six public examiners. By 1825, owing to the increase in the number of candidates, 'it became necessary that the examinations should be conducted more and more on paper'.¹ 'In 1828 the plan of printing the questions proposed to the candidates was first introduced.'² Huber visited the English universities while this movement was in progress, and he was greatly impressed by the new mechanism of testing. He put his finger upon its novel feature when he described the tests as consisting of 'extemporaneous writing'.³ It was 'extemporaneous' because the candidate did not know what questions he would be asked beforehand; the questions, set and corrected by impartial examiners, were answered in writing within a given space of time. By 1852 'the examinations have become the chief instrument not only for testing the proficiency of the students but also for stimulating and directing the studies of the place. . . . The general effect of this change has been exceedingly beneficial. Industry has been greatly increased.'⁴ Thus evolved within the universities the modern examination mechanism.

About the same period a similar system was being elaborated in other spheres for another purpose. After much hesitation and experiment it came to be used as a means of obtaining, in Chadwick's phrase, 'securities for special fitness' for admission to the professions.⁵ It is true that the invention was not made independently twice over. We find men, known to have been acquainted with the system in one sphere, active in promoting its introduction elsewhere. Gladstone, a double first, and Macaulay, winner of an open fellowship by competitive examination at Cambridge, did not need to be convinced of the merits of the examination system.⁶ But it is true at the same time that experiments with the new method were separately conducted and with different objects.⁷ While the method was being tried out in the universities with educational ends, it was also being experimented with in order to ensure competence in the public service and in certain professions—notably the apothecaries.

¹ Ibid.

² Ibid., p. 63.

³ V. A. Huber, *The English Universities* (1843), vol. ii, p. 354.

⁴ *Report of the Oxford University Commission* (1852), p. 61.

⁵ *Papers relating to the Reorganization of the Civil Service* (1854-5), p. 186.

⁶ 'It is intended to introduce the principle of competition in the disposal of writerships, and from this change I cannot but anticipate the happiest results.' From a speech by Macaulay on the East India Company's Charter Bill, 1833. *Parliamentary Debates*, vol. xix, col. 524.

⁷ The article in the *Quarterly Review* (vol. xxxvi (1827), p. 218) has, for instance, much to say about examinations, but they are regarded wholly as instruments tending towards educational efficiency. See the summing up of the argument on p. 264.

Speaking in the House of Lords in 1813 on the question of the renewal of the charter of the East India Company, Lord Grenville said that 'the most obvious course would be to choose young men who are destined for the civil service by free competition and public examination from our great schools and universities'.¹ For some time, ever since the Warren Hastings trial perhaps, emphasis had been laid upon the heavy responsibility falling upon administrators in India—not then, of course, nor for some years to come, public administrators in the full sense of the term. 'To dispense justice', wrote Lord Wellesley in a memorandum when Governor-General in 1800, 'to millions of people of various languages, manners, usages, and religions; to administer a vast and complicated system of revenue throughout districts equal in extent to some of the most considerable kingdoms in Europe; to maintain civil order in one of the most populous and litigious regions of the world; these are now the duties of the larger proportion of the civil servants of the Company.'² Wellesley proposed a plan for a college in India where young recruits to the service were to be trained for several years upon arrival in the country. His project found little favour with the directors at the moment, and a college near Calcutta for teaching Indian languages was all that resulted from it. Wellesley's plans were, however, destined to bear fruit, and in 1806 a college was founded at Haileybury where young men could be trained before going to India. Training was not made compulsory until 1813, when, under an Act of that year, four years at Haileybury were required of all young men about to take up appointments in the civil service of the Company. By an Act of 1826, owing to a scarcity of candidates, it was made permissible for the Company to send direct to India candidates who had not been at Haileybury if they were successful in a pass examination. When the Company's charter was renewed in 1833, it was provided that candidates, nominated by the Company, should be examined both on their admission to and on their passing out of Haileybury. In 1837 a halt was called in the building-up of an effective examination system; an Act of that year gave power to the Board of Control to suspend the provisions of the Act of 1833 relating to admission to Haileybury.

'The great and increasing accumulation of public business' at home led to similar experiments.³ Between 1834 and 1841 pass examinations were established in some of the departments, and in

¹ *Parliamentary Debates* (1813), vol. xxv, col. 727.

² *A Selection from the Despatches, Treaties, and other papers of the Marquess Wellesley*, ed. S. J. Owen (1877), p. 719.

³ *Report on the Organization of the Permanent Civil Service* (1853), p. 3.

several cases even competitive examinations were introduced. It would seem that inroads upon the patronage system were made even earlier in Ireland. In the recruitment to the Ordnance Survey of that country, begun in 1825, the principle was adopted that all appointments and promotions should be 'made by the person with whom the responsibility for the work rested'.¹ In 1833 the Lord Lieutenant, who was responsible for the appointment of county surveyors, set up a board of examiners, and thereafter appointments were made solely from those who had done best in the examination. Bentham was in favour of examinations for the public service; he proposed that they should be held in public and be conducted orally.² Those interested in the working-out of the reforms initiated by Parliament after 1832 were much concerned with finding 'securities for a special fitness' in those appointed to administer the new Acts. Chadwick stated that the members, not only of the Poor Law Commission of 1834, but also of all other Royal Commissions upon the service, were insistent upon the need for getting rid of patronage. In a paper by him printed in the *Report* of 1853 it is made evident that he was feeling his way towards a system of examinations. It would not seem that any examinations were in fact instituted as a result of the Poor Law Amendment Act of 1834; but, after the Public Health Act, 1848, the General Board of Health devised, at Chadwick's instigation, a form of written examination for candidates for engineering inspectorships. A document was handed to the candidate containing a description of a town with defective drainage; he took the document away and submitted in a fortnight a memorandum explaining in detail how he would remedy the defects. That the modern examination technique was still unfamiliar in 1853 emerges from the fact that the secretary to the Department of Science and Art, in his paper printed in the *Report* of 1853, thought it worth while to describe in detail the scene so familiar to us. 'The candidates assemble in a large room and are required within specific periods, usually of two hours, to answer written questions.'³

The rest of this story requires but brief notice here. In 1848 the first of several committees was appointed, each of which inquired into a different government department. In 1852 Gladstone by Treasury Minute directed Trevelyan and Northcote to extend these inquiries so as to include the whole civil service. Before they presented their report, the renewal of the charter of the East India

¹ *Papers relating to the Reorganization of the Civil Service* (1854-5), p. 68.

² J. Bentham, *Official Aptitude Maximized; Expense Minimized* (1830), p. 3.

³ *Report on the Organization of the Permanent Civil Service* (1853), p. 245.

Company came up for consideration, and provision was made in the Act that recruitment of the civil servants of the Company should be by examination. In 1854 the Northcote-Trevelyan Report was presented to Parliament, and in 1855 came the Order in Council setting up the Civil Service Commission.

Meantime the Society of Apothecaries, which had set out to operate the Act of 1815 with great energy, was led early to adopt the new mechanism. The report of the board of examiners instituted by the Society records that during the session 1839-40 'for the first time written questions were set to be answered in writing'.¹ As early as 1809 'an Order in Council established in the Naval College at Portsmouth a superior class of shipwright's apprentices. Twenty-five young men, after a difficult entrance examination, were taught the theory and practice of ship-building. On the completion of their course they cruised for one year, "during which", the Order directed, "they shall mess with the officers and be treated in all respects as gentlemen".'² In 1836 a committee of the House of Commons recommended compulsory qualification for officers in the merchant navy. But though voluntary examinations were established in 1845, it was not until 1850 that it became compulsory for officers in foreign-going ships to possess certificates and that local marine boards were set up to issue these certificates. Indeed the use of examination tests did not become general in the professions until the second half of the century and was largely due to the example of the civil service. 'The fact of the system of Examination for Offices in all the services under Government having worked satisfactorily,' said the President of the Royal Institute of British Architects in 1862, 'seems to have led to a desire to introduce a similar system into the Education of an Architect.'³

The introduction of examinations was not the only development in professional training witnessed in the nineteenth century. One of the most important events of the last hundred years was the resumption by the older universities of their ancient functions of training and testing and the rise of new universities primarily for this purpose. 'It is important to note,' said the Royal Commissioners in 1852, 'the extent to which all separate branches of learning, both professional and preparatory to professions, have been suffered to decay [at Oxford].'⁴ The Commissioners were

¹ C. J. B. Barrett, *The History of the Society of Apothecaries of London* (1905), p. 220.

² E. Halévy, *History of the English People in 1815* (1924), p. 44.

³ *Institute of British Architects. Sessional Papers, 1862-3*, pp. 8 and 9.

⁴ *Report of the Oxford University Commission* (1852), p. 71.

insistent upon the need for the development of professional training; the Oxford Commissioners laid stress upon law and medicine; 'there is one department of study', said the Cambridge Commissioners, 'leading to one of the most lucrative and important professional employments in this country, which is now quite neglected in the university but which seems to us to come strictly within her province; we mean the science of civil engineering'.¹ Progress was slow in the older universities; the medical schools were the first to show signs of life, though the influence of Acland at Oxford, who favoured the development of the science of medicine but not of a medical school, delayed matters. It was not until 1875 that a chair in Mechanism and Applied Mechanics or, in other words, of engineering, was founded at Cambridge; the Oxford chair of Engineering Science was founded in 1907.² Progress was more rapid at Cambridge than at Oxford. The Cambridge Teachers Training Syndicate came into being in 1879, the Oxford Department for the Training of Teachers in 1919. At Cambridge a Readership in Estate Management was instituted in 1920, and it is possible to take an ordinary degree in either estate management or in architecture; at Oxford these subjects have not yet found a place.³

The successive steps in the development of the older universities, as places where professional training may be obtained, were taken with reluctance and in face of opposition. Had it not been for the amenities of life which they offer, and especially for the social prestige which they confer, students might have been content with the facilities which had been made available elsewhere; and Oxford and Cambridge might have discovered that their unwillingness to resume their ancient functions had relegated them to a very obscure position. The new universities, on the other hand, arose from the amalgamation of local schools of professional training. In Leeds, for example, medical instruction was being given in the Old Infirmary about the year 1800, and out of this beginning arose the Leeds School of Medicine in 1831, which remained independent

¹ *Report of the Cambridge University Commission* (1852), p. 97.

² It is not easy to give a date for the beginning of professional study in any one subject. The foundation of a chair is no proof that professional study then began. Thus the Regius Professorship of Physic at Cambridge was founded in 1540, the Regius Professorship in Medicine at Oxford in 1546, the Professorship of Chemistry at Cambridge in 1702 and at Oxford in 1708. On the other hand a department of professional training may grow up before a chair is founded. The training departments for teachers at Oxford and Cambridge are examples of the latter.

³ A college bursar holds the title of Departmental Lecturer in Estate Management, and students of the School of Rural Economy, at least in theory, attend the lectures.

until 1884. Meanwhile from various roots, the Mechanics Institutes and the efforts of the Yorkshire Board of Education to form a central science college among others, Yorkshire College grew up; the College had a department of civil and mechanical engineering from 1876. In 1884 the Medical School and the College were amalgamated, and in 1887 they became a constituent college of the Victoria University. Finally in 1904 the constituent college was transformed into the University of Leeds.¹ The history of the other new universities is parallel to that of Leeds; medical schools arose in the first half of the century; colleges of science, including chemistry and engineering, grew up in the second half; amalgamation took place, departments of dentistry and architecture were added—before or after incorporation as a university, which is the final step.²

The advance of the universities into this field has sometimes had to wait for the realization by the profession of the need for theoretical instruction. In the case of the medical profession, advance was comparatively rapid because early in the last century doctors began to demonstrate to students in the hospitals, whence arose the medical schools. In engineering it was not so. 'In regard to medicine the universities have asserted their function,' said the Professor of Engineering at Cambridge in 1891; 'they have recovered their historical position as professional schools. No one will now contend that a doctor is adequately trained by passing through an apprenticeship which takes no account of the scientific basis of this subject. In regard to engineering the battle is as yet but half won.'³ It is clear that what Professor (later Sir James) Ewing had in mind, when he spoke of the battle as not being half won as late as 1891, was not only the reluctance of Oxford and Cambridge to enter the field, when other institutions had already done so, but also the reluctance of engineers themselves to believe that theoretical instruction could be dissociated from training and handed over to academic institutions.⁴ Evidence of this is found in

¹ See *A Short Account of the Growth of the University of Leeds* (1924).

² Degrees in dentistry were instituted early in the present century at Birmingham, and later at Dublin, Bristol, Durham, Manchester, and Liverpool. In 1920 the first professor of Dental Surgery was appointed at Liverpool.

³ J. A. Ewing, *The University Training of Engineers* (1891), p. 5.

⁴ According to Sir James Ewing (op. cit., p. 12) the university training of engineers 'may be said to have had its foundation laid' when Rankine was appointed to the chair of Civil Engineering and Mechanics in Glasgow in 1856; this chair was founded in 1840, and a similar chair was founded in Edinburgh in 1856. A department of Civil Engineering was opened at King's College as early as 1838. It was some time before it became specifically devoted to engineering. From 1844, for some years onward, it was called 'the department for instruction in the applied sciences, including natural philosophy, manufacturing

the fact that not until 1897 did the Institution of Civil Engineers, and not until 1912 did the Institution of Mechanical Engineers, decide to hold their own examinations, the inference being that up to these dates they held that a complete training could be obtained through pupilage.

The rise of the examination system, which is now found almost throughout the professional world, has been followed by the provision of facilities for theoretical training in the subjects of the examinations. This movement has been accompanied by the recession of apprenticeship in its old form. Though the distinction was not clearly drawn, not only practical but also theoretical training was formerly obtained during apprenticeship, in the sense that, while he was serving his time, the apprentice picked up such theoretical knowledge as he ever gained. Nowadays apprenticeship is confined to practical instruction, and, if there are no institutions in which the pupil can learn the theory, he must do so by private study. But the movement has not stopped at this point. Practical training is now sometimes given in, or under the supervision of, the institutions which provide theoretical training, as for instance, in medicine and dentistry. Thus apprenticeship, even in its modern form, is steadily losing ground before the universities and other training institutions.

The advance of the universities has not been accompanied by any voluntary relinquishment by the professional associations of the function of testing entrance by examination. Except in those cases in which the exclusive right of testing has been given by statute to other authorities, the associations play a part, and sometimes a very important part, in the examination system. But as a general rule they have not set out to provide and maintain training institutions. To this there are some exceptions. The Law Society conducts a law school in London and subsidizes provincial law schools, while the Council of Legal Education, set up by the Inns of Court, arranges lectures. The Auctioneers' and Estate Agents' Institute and the Chartered Surveyors' Institution founded the College of Estate Management, which has now become an independent body, though the associations mentioned, together with the Land Agents' Society, have the right to nominate governors. The school maintained by the Architectural Association in London was founded by architects. Apart from such cases, the professional associations confine themselves to holding examinations and to defining what arts, engineering and architecture' (F. J. C. Hearnshaw, *Centenary History of King's College* (1929), p. 190). It had been intended by the founders of University College to establish a department of engineering at the opening of the College in 1827, but in fact the chair was not filled until 1841.

courses of training, if any, must have been followed by candidates.

It might have been supposed that there would have been a struggle between the universities and the associations for the capture of the key position, that is to say, for conducting the actual tests of competence. But the only friction which has arisen has been where the State has handed over testing to certain bodies and has thereby cut out others. Sometimes the universities have been aggrieved, as in the case of veterinary surgery, because no place was given to them in the examination system. At other times the profession has had a grievance, as in the case of medicine, when objection was taken to the monopoly of the examining bodies. But when a profession has been unregulated by statute, there has seldom been conflict. If universities begin to examine, the associations are usually willing enough to recognize a university degree as admitting to membership; the universities do not aim at a monopoly of testing and do not therefore appear to threaten the freedom of the associations. In many cases associations have requested universities to set up courses of training, and in some cases have founded teaching posts and scholarships. But certain professions remain largely outside the university ambit, notably those connected with business, accountants, actuaries, and others, and also those connected with real estate. Though the position is accepted with little question, it does not follow that it is satisfactory; and one of the more important topics in the discussion now to follow will be the place of the universities on the one hand and of the associations on the other in the training and testing of entrants to the professions.

III

CONSTITUTION

The Association of Practitioners

BASIS OF ASSOCIATION.

FROM an account of the evolution of the professions we proceed to an analysis and evaluation of professionalism as it is to-day. We have selected five main avenues of approach: the constitutional, the educational, the economic, the ethical, and that arising from the relations between the organized professions and the public. Viewed from the constitutional aspect the system exhibits two principal features, the spontaneous coming together of the practitioners in associations, and the regulative intervention of the State; but inasmuch as it is the purpose of professional associations to achieve, and of the State, where it intervenes, to grant, some degree of monopoly of function to the practitioners, we have also to consider the constitutional mechanism whereby this monopoly is secured.¹

Generally speaking each profession is organized on a craft basis; and though within a profession it is usual to find a number of independent associations, relations between them are generally friendly, and there is a clear tendency towards a dominating association or a closely co-operating group. In this respect the professional world contrasts strongly with the trade union world, where demarcation problems have always been acute. For explanation of this contrast we must look to the motives for association. The trade union is virtually a single-purpose association. The protective function overshadows all others in importance; consequently the search for the strongest bargaining unit becomes the dominant consideration, and efforts are always being made to extend the boundaries. In the professional world, as we have seen in our account of the rise of professional associations, it is otherwise. Though the protective motive is present, it is only one among many and by no means always the most important. In particular the desire to hall-mark the competent and to foster the study of the technique give to the technique such an importance that boundaries are clearly defined and stable. Only during the

¹ The conditions and circumstances in which persons are admitted to or excluded from the ranks of a profession may be regarded as constitutional matters. Nevertheless it has seemed more convenient to treat them as aspects of the problems of professional education and professional conduct respectively.

birth of new techniques, such as ophthalmology, have boundary disputes become at all serious.

Nevertheless, though boundaries are stable, the variety of objects with which professional men associate together favours the multiplication of associations within each profession, so that the number of associations involved and the bewildering variety of types to which they conform have become a characteristic feature of the professional world. The extent to which this multiplication has gone in any profession and the degree to which it constitutes a weakness in its organization depend upon a number of circumstances; but it is possible to distinguish certain factors which, though not necessarily productive of disharmony or inefficiency, are specially favourable to the multiple form of organization. They are (1) the presence of one or more distinct 'sub-crafts' within a profession, (2) differences of what may be termed 'professional status' among the practitioners, (3) differences of economic status, (4) the factor of common employment, (5) the geographical factor, and (6) the antagonism of 'insiders' and 'outsiders'. Indeed two or more of these factors may be present simultaneously.

'Sub-crafts' are associated mainly with the field of the applied sciences, and they have assumed a special importance in the engineering world. This is not due to the many different sciences involved, for there are not many, but rather to the variety of distinct uses to which they can be put. Of the 'big four' among the engineering associations, three, the Civils, the Mechanicals, and the Naval Architects, represent separate industrial applications of the principles of mechanics. The fourth is based upon a separate branch of physics, namely electricity. Among the lesser associations, the Institute of Wireless Technology represents a special application of electrical engineering, the Institution of Automobile Engineers the application of mechanical and electrical engineering to the design and manufacture of motor-cars, and the Institutions of Water Engineers and Sanitary Engineers the application of 'civil' engineering to the water-supply and the sanitation of towns. If the main purpose of these associations had been protective, their eventual amalgamation or federation might be expected. Their principal objects, however, are the hall-marking of their members for special competence in the sub-craft and the holding of meetings and publication of a journal for the discussion of its problems. These objects clearly will be best served by their remaining distinct. Nevertheless the maintenance by each of its own identity implies no mutual hostility, and there is in fact co-operation between them and much overlapping

membership. A tendency towards the development of the sub-craft association is also observable in the property professions; but with a less scientific technique the centrifugal and centripetal forces are more evenly balanced. The auctioneers and the estate agents have become wholly amalgamated, while the quantity surveyors, once entirely outside, now have their own organization within the Chartered Surveyors' Institution. The land agents, on the other hand, retain their sub-craft association, as do the rating surveyors, the agricultural and tenant-right valuers, and others. Yet, though the associations remain distinct, co-operating machinery has been set up and a single policy guides them all.

The professional status association found in certain non-scientific professions may be regarded as in some sense the counterpart of the sub-craft association among engineers and others. Within this description we include the Association of Hospital Matrons in the nursing profession, and numerous bodies in the teaching world based upon the division of schools into elementary and secondary, and of the teachers in them into head teachers and assistant teachers. We have related elsewhere how a single group, the teachers in elementary schools, sought at one time to dominate the whole teaching world, thus arousing the hostility and antagonism of other groups; but we have also seen that the existing distinctions of professional status came ultimately to be accepted and that the sectional associations which are based upon them settled down to co-operate through the federal mechanism of the 'Joint Six'.

Among the sectional associations in the teaching profession, however, there are others which are based upon distinctions that are not generally accepted and which represent therefore disruptive rather than cohesive forces. The fact that the sexes do not stand upon a footing of economic equality has led the sectional associations of elementary school teachers which are based upon sex to take on the character of economic status associations, aiming at the advancement of the salaries of the one sex relatively to those of the other. In elementary schools women teachers are numerically preponderant, and the National Union of Women Teachers has succeeded in getting its objectives officially adopted by the N.U.T. as part of the policy of that body. There is therefore no rivalry between them. But between the National Union of Women Teachers and the N.U.T. on the one hand, and the National Association of Schoolmasters on the other, long-standing hostility continues and co-operation has proved impossible. It is not only among the teachers that the appearance of economic status associations has

led to difficulties and a divided front. We have seen the British Association of Chemists opposed to the Institute of Chemistry, and the National Union of Journalists driving in uneasy harness with the Institute of Journalists; while in the government service, where the protective motive dominates over all others, we have surveyed a field where conditions approximate to those of the trade union world. In that field a vast multitude of associations, by no means always amicably disposed towards one another, are engaged in forming and re-forming huge confederations, in the hope of discovering the strongest bargaining unit. But at this point we pass beyond the limits of professional associations proper.

Nevertheless, among associations of government servants, there are a certain number which approximate to a somewhat different type. The Civil Service Legal Society, consisting of those members of both branches of the legal profession who are, for the moment, in government employment, may be regarded as an economic status association in so far as it is concerned to press the claims of its members to equal pay and equal prospects with the administrator. But its position is analogous also to that of the Institute of Municipal Treasurers and Accountants or of the Society of Medical Officers of Health. The bond between the legal advisers of government departments, or between the medical officers to local authorities, is not a difference in economic status as between them and barristers or doctors in private practice. Such a difference of economic status can hardly arise so long as they are free at any moment to relinquish public for private employment. But the fact of common employment in the public service, while it lasts, gives rise to common problems which demand their own forum for discussion. In the case of the Civil Service Legal Society these problems relate mainly to remuneration and status. But the associations of technicians in the local government service are more nearly akin to the sub-craft associations among the engineers. The bond is indeed common employment, but a form of common employment which creates its own technical problems. Study activities therefore come to play a large part in the life of such bodies; while in the Institute of Municipal Treasurers and Accountants we find a common employment association which includes testing for competence among its functions. The work in a City Treasurer's office is sufficiently unlike private practice to have gained recognition as a sub-craft; and, in filling an appointment, the candidate who has obtained the hall-mark of the sub-craft association will generally be preferred to the Chartered or Incorporated Accountant. But this implies no rivalry or hostility.

The common employment association, like the sub-craft association, which it so far resembles, looks to the major craft association for friendly co-operation and support. Thus the Civil Service Legal Society, in its negotiations with the Treasury, receives the vigorous backing of the Bar Council and the Law Society. The Society of Medical Officers of Health is in constant consultation with the B.M.A.; while the Poor Law Medical Officers Association was deliberately founded by that body in order to help it in its efforts to improve the conditions of service among medical officers under Boards of Guardians.

The multiple form of organization, so far as it is attributable to any of the factors just considered, namely, sub-crafts, differences of professional status, differences of economic status, or common employment, is in some measure inevitable, and need not, save where there are disparities of economic status which are felt to be unjust, lead to disharmony or inefficiency. But where a multiplicity of associations has been allowed to grow up on a purely geographical foundation, there results serious inefficiency of a wholly avoidable kind. Thus the importance of London in the professional world is so great that the existence of an independent association of London practitioners may seriously prejudice any association organized on a national basis. So long as the London Teachers Association remained an independent body it was found almost impossible for the N.U.T. to attract London members, and many years of acute rivalry were only brought to an end in 1922 by amalgamation, the London Teachers Association becoming the metropolitan branch of the N.U.T. A more usual case is that exemplified by the solicitors, where a national association, with headquarters in London, is surrounded by a group of nominally independent provincial associations. The story is told in Part I of the efforts of the solicitors to overcome the disadvantages of this form of organization, efforts whose sole achievement up to now has been the institution of the annual provincial conference and of the cumbrous liaison machinery represented by the Yorkshire Union of Law Societies and Associated Provincial Law Societies. Admittedly no professional association can operate efficiently without some form of provincial organization enabling country practitioners to make their influence felt. But this organization should take the form of branches and not of independent satellite associations. If, for historical or other reasons, independent associations have been allowed to come into existence, policy should, where possible, be directed towards their absorption and reconstitution as branches of the main body.

It is possible that circumstances may arise where the national and provincial associations are kept apart by something more than the geographical factor alone. There is reason for supposing that in the case of the architects some such additional factors are present, since conditions of work in the provinces differ considerably from those obtaining in London. Even in large provincial towns clients are neither so numerous nor so wealthy as in London and the home counties, and many provincial architects cannot adhere to the R.I.B.A. scale of fees, or aspire to an income large enough to recoup themselves for the heavy outlay involved in the R.I.B.A. course of training. The allied societies cater for the wants of these practitioners by admitting upon a lower standard of qualification. Examinations are, generally speaking, not compulsory, and three years' experience is in most cases sufficient to enable a man to qualify. Thus the allied societies are seen to be not merely provincial associations, but in some degree associations of 'outsiders' similar to those which we are about to consider; and this being so, the remarkable fact is not that they remain distinct from the London Institute, but that they are fully recognized by it as representing the profession within their respective areas, and are indeed organically connected with it by representation upon the Institute council and otherwise.

In this respect the architects are unique. The R.I.B.A. affords the only instance of a professional body which, while demanding a certain minimum qualification from its own members, is yet prepared to countenance and acknowledge as members of the profession, persons admitted to other bodies upon qualifications substantially below that minimum. A standard of qualification lower than that required by the recognized professional body is the mark of an association of 'outsiders'; and the association of 'outsiders', aiming, as it must do, at equality of recognition for its members, is generally regarded by those who for the time being constitute the 'insiders' with unconcealed hostility and contempt. Even between the R.I.B.A. and its allied societies relations have not always been untainted with jealousy. It is significant that it could be asserted of the allied societies by one holding a responsible position in the Institute that 'they want their men to get into this Institute by another way than by its examinations'.¹ The fact that the allegation was subsequently denied does not destroy its value as evidence of a state of mind.

Associations of outsiders have been found, in one form or another and at one time or another, in most professions where

¹ R.I.B.A.: *Journal*, 3rd ser., vol. xxx (1922-3), p. 219.

practice by the unqualified is not absolutely prohibited by law. In architecture the allied societies have something of this character, in chemistry the British Association of Chemists, and in auctioneering the Incorporated Society of Auctioneers and Landed Property Agents. In these professions, however, conflict between insiders and outsiders is not at the present time very acute; though, as the architects discovered during the protracted negotiations which preceded the passing of the recent registration Act, it is easily aroused. The outstanding instance of prolonged and apparently insoluble conflict is that afforded by the accountancy profession. The story of the founding of successive associations of outsiders in that profession, of their search for new fancy titles, of their unremitting struggle for recognition and for privileges, and of the despairing appeal of the Local Legislation Committee of the House of Commons for some system of state hall-marking, has been told at length in Part I; and it is not necessary to tell it again here. What possibilities of solution does such a situation offer?

It is noteworthy that two professions where conflict was particularly acute have almost entirely got rid of it. Among the dentists the problem was solved by a new registration Act which gave existing outsiders the right to be registered, but for the future prohibited practice by the outsider altogether. Among the architects it was rendered very much less acute by the amalgamation of the R.I.B.A. with the Society of Architects on terms which gave the members of the latter body the option of taking an examination in those subjects in which the Society did not examine, or of admission to a lower grade of membership in the Royal Institute where they would remain distinct from the fully qualified members of that body. In the accountancy profession much could be done by state registration. The State already reserves the performance of certain functions to specified persons, and there results an undignified scramble among competing associations for the recognition of their members. State registration would remove all the bitterness thus aroused. On the other hand it is to be doubted if it would bring about complete unification. The profession draws its clientele from widely differing strata, ranging from the great banks and industrial combines down to the small tradesman who wants his books made up at the end of the year. So long as this remains the case, differences of qualification among accountants, corresponding to differences in ability to pay among their clients, are likely to persist. At the same time the sting would be largely removed by a system of registration. The distinction between the registered accountant and the chartered accountant would then

become assimilated to that between the registered medical practitioner and the Fellow of the Royal College of Physicians. It would be a distinction between those possessing the minimum qualification and those possessing something more than that minimum, not, as it now is in the accountancy profession, and as it was in the popular estimation in the medical profession before the Medical Act, a distinction between those possessing the recognized minimum qualification and those possessing something less than the recognized minimum. In general, therefore, the persistence of conflict between insiders and outsiders, like the survival of independent provincial associations, indicates unresolved problems of organization rather than an inherent weakness in the professional system itself.

LEGAL STATUS.

By the constitution of an association may be meant either the relation in which it stands to the outside world or the relation in which its members stand to one another. The limits set by the law to the powers of vocational bodies have never seriously hampered professional associations in the attainment of their objects, and consequently among such associations the problem of their relations with the outside world has not assumed the proportions which frequent conflicts with the courts have given it in the trade union field. Nevertheless the degree to which a professional association is subject to state supervision, and to some extent also the form of its internal government, depend upon its external constitution or legal status, while the vigour and efficiency with which its aims are pursued may be greatly affected by its internal constitution and tradition of government. These must therefore be considered.

Professional associations exhibit a considerable variety of legal forms; and these have in so many cases been determined by historical causes that a study of them is perhaps best approached from the historical angle. Those associations of practitioners, if they can be so described, which date from before the industrial revolution—the Inns of Court, the Royal Colleges of Physicians and Surgeons, and the Society of Apothecaries—to a greater or less extent show traces in their constitutions of their descent from the gild, an institution possessing legal attributes which make it difficult to classify under any modern scheme. The Inns of Court in particular are wholly exceptional, in that they enjoy the advantages of incorporation without its responsibilities; for their powers are not limited by any governing instrument, the courts have no control over them, and they do not come under the

supervision of any organ of the government. They are only subject to a vague nominal jurisdiction on the part of the judges, who, as we have seen, are themselves always members of one or other Inn. The ancient medical corporations, on the other hand, though they retain certain constitutional peculiarities, have been granted charters which bring them more or less into line with the chartered bodies of more recent date to be considered hereafter.

The earliest professional associations of the modern type, dating from the late eighteenth and early nineteenth centuries, and often founded as dining-clubs, were akin to the social, philanthropic, or learned society, and to the friendly society or workmen's club; and they assumed the form of a voluntary unincorporated association which all clubs adopted at that period. Since the foundation of the Inns of Court the common law had worked out a more or less coherent body of rules governing the right of individuals to associate for the promotion of a common purpose. The friendly society or workmen's club, as it developed into the modern trade union, found in these rules a serious hindrance to its activities, and until the Trade Union Acts devised a form of legal personality more nearly adapted to its needs, was in constant conflict with the law. In the case of professional bodies, doubt never having been thrown on the legality of their objects, this difficulty did not arise. Nevertheless the status of a voluntary unincorporated society, adopted by the newly-founded professional bodies of the eighteenth and early nineteenth centuries, though it was suited to that age of experiment, is attended with considerable disadvantages. The association has no corporate existence in the eye of the law; it cannot sue in its own name, nor can it be made the subject of proceedings. It can hold property only through the mechanism of the trust; proceedings to defend its property must be taken in the name of the trustees; new trustees must from time to time be appointed, and upon each new appointment the property must be conveyed to them with due formality.¹ The officers of the association may find themselves exposed to personal liability, and the association may be greatly hampered in the pursuit of its general activities. Like every other association, the powers of a voluntary unincorporated society are limited by the scope of its objects and the provisions of its rules; but having no corporate existence, it is regarded in legal theory as being founded upon a multiplicity of contracts between each of the members and all the other members, whereby they are held to have agreed that the society shall promote

¹ The property of the Land Agents' Society, before its incorporation, was vested in the Public Trustee, whereby the difficulty was in part surmounted.

such and such objects by such and such means. Consequently, unless provision for amendment has been made, no alteration in the objects or rules is possible without the concurrence of all the parties to all the implied contracts—without in fact the unanimous consent of all the members. Such a situation arose in quite recent years when the Land Agents' Society, at that time a voluntary unincorporated body, had under consideration proposals for the amalgamation of the Society with the Surveyors' Institution as it then was. Counsel's opinion was taken, and it was found that the Society had no power, and could not except by a unanimous vote take power, to amalgamate with any other body. Though the scheme of amalgamation was subsequently dropped, the Society profited by the experience, dissolved itself, and was reconstituted as a limited company.¹ At the present time the N.U.T. is the only professional association of any importance which is not incorporated in some form or other. Its rules appear to be so drafted as to give to its executive the most ample powers.

Professional associations, though possessing certain features in common with trade unions, have not often registered under the Trade Union Acts. The reason for this is not far to seek. A trade union is in law simply an unincorporated body, endowed with certain statutory privileges, but retaining many of the disabilities which other unincorporated associations are under, for example in the holding of property. Indeed additional disabilities are incurred inasmuch as certain agreements between it and its members and between its members *inter se* may prove unenforceable at law; while the compensating privileges secured by statute to trade unions, such as non-liability for the tortious acts of its servants and immunity from some of the legal consequences attending any combination of persons having objects which are in restraint of trade, are of little value to professional associations. Professional bodies do not resort to the strike weapon save with extreme rarity; and in their use of the black-list and the boycott they are reasonably safe from interference by the courts, so long as they can show that they are acting in the 'honour and interests of the profession', and provided they abstain from the employment of 'threats'.²

¹ Subsequently it received a charter.

² Compare *Thompson v. British Medical Association*, [1924] A.C. 764, where a rule providing for the boycotting of an expelled member was held not to be in restraint of trade because its object was 'the maintenance of the honour and interests of the medical profession'; and *Pratt v. British Medical Association*, [1919] 1 K.B. 244, where a threat to expel members if they failed to boycott certain non-members was held to amount to a restraint of trade. On many points the law is far from clear. But it remains true to say that professional associations have not often come into conflict with it.

Nevertheless the professional world is fringed with associations of clerical and other non-manual workers who occupy a low economic status. These associations sometimes find themselves in sympathy with trade union aspirations. Representation upon the Trade Union Congress General Council was valued (before 1927) by numerous associations representing the lower grades of the national civil service. The Musicians Union is still affiliated to the Congress; while the Institute of Journalists (in spite of its being a chartered body), the National Union of Journalists, and the British Association of Chemists are all registered trade unions. So also is the Society of Technical Engineers, though it disclaims association with the labour movement. Indeed association with that movement is generally regarded, even among the more economically dependent of the professions, as calculated to depress rather than to elevate their social status, and is therefore avoided even in cases where one might expect it to be sought after. Thus the Bank Officers Guild, a society which might be expected to share the outlook of the Civil Service Clerical Association, decided after some debate not to seek registration under the Trade Union Acts.

As the nineteenth century progressed the objective of any professional association, which had outgrown the experimental or dining-club stage, was the grant of a Royal Charter. The Institution of Civil Engineers, founded in 1818, received a charter in 1828. The Law Society, constituted in 1825 to take over and extend the duties of the old 'Law Society' of 1729, became a chartered body in 1831. The R.I.B.A., founded in 1834, received a charter three years later; the Pharmaceutical Society became chartered in 1843, and the R.C.V.S. in 1844. Then for nearly forty years no further charters were granted to professional bodies.

In 1862 the Companies Act of that year made it possible for any seven or more persons associated for any lawful purpose to secure the benefits of incorporation merely by complying with the requirements of the Act. In consequence many professional associations, which might otherwise have been led to petition for a charter, became incorporated as limited companies.¹ Thus in 1874 the B.M.A. became incorporated under the Companies Acts 'with a view to protection of its property . . . this course being found to have great advantage in point of expense over incorporation by charter'.² Incorporation under the Companies Acts is now a very common form of association among professional bodies. A

¹ The liability is limited, not, as in a trading company, by shares, but by guarantee, usually of £1 *is.*, which each member for the time being agrees to contribute to the assets of the company in the event of its being wound up.

² B.M.A.: *Annual Handbook*, 1927-8, p. 126.

company under these Acts secures every legal advantage in the way of holding and dealing with its property in its own name; its officers can act without incurring personal liability, and it can to all intents and purposes frame its objects and its constitution as it pleases, subject to the one exception that the objects must not include any that would make it a trade union. This provision is intended to keep the rights and liabilities of trade unions clearly distinct from those of trading companies. It is not designed to, and does not in fact, fetter the freedom of professional associations; but it prevents trade unions from acquiring legal privileges which were introduced for the benefit of traders, professional men, and others, and insures that, if they register at all, they shall do so under the Trade Union Acts which were designed for their regulation.

The Companies Acts are administered by the Board of Trade, and it is necessary to apply to the Board for incorporation; but the Board's function is purely administrative and not in any sense supervisory. Provided the requirements are complied with, and of these the abstention from trade union activities is the only one of any importance,¹ incorporation cannot be refused. The course adopted by most professional bodies is to make use of certain provisions which enable a company formed for promoting 'commerce, art, science, religion, or any other useful object',² generally known as a 'company not for profit', to obtain a licence from the Board to omit the use of the word 'limited' after its name. It is not easy to see what advantage is thought to attend this privilege, but it seems to be valued, and the terms on which it will be granted are not onerous. The only condition specifically laid down in the Act is that the company must not distribute any dividend to its members. The Board can make what further conditions they choose; but they do not seem to make any conditions which result in applications being withdrawn. In 1924 the Surveyors' Institution and the Auctioneers' and Estate Agents' Institute went to the length of opposing an application for the licence lodged by the Incorporated Society of Auctioneers and Landed Property Agents. The opposition was not successful; though the Incorporated Society was induced to omit from its title any reference to 'Surveyors'.

A company under these Acts is governed in its constitution and powers by two instruments—the memorandum of association and the articles of association. The memorandum must include the objects of the company, and beyond the objects as laid down in

¹ Also the title of the proposed company must not be such as to cause confusion. It may be recalled that the proposed 'Institute of Professional Chemists' was refused incorporation on these grounds.

² 19 & 20 Geo. V, c. 23, s. 18 (1).

the memorandum it cannot go. The articles regulate its internal constitution and the means whereby the objects are to be attained. So long as they remain in force they bind the company just as much as the memorandum; but they differ from the memorandum in that, by the use of the appropriate procedure, they can be altered by the company acting alone. But though the memorandum, once registered, cannot be altered by the company itself, nevertheless it rests with the original subscribers to frame both the memorandum and the articles, and thus in reality the system allows the utmost freedom.¹ The memorandum will be strictly construed by the courts; if therefore it is narrowly drawn or enters into detail which should have been reserved for the articles, the association may find itself hampered in its activities, with the result that powers have to be sought to alter the memorandum. Formerly this could not be done without an Act of Parliament; but the process is now comparatively simple, and it is only necessary to get the sanction of the court, which will be given so long as the alteration is not of a 'fundamental' character,² and, in the case of a company with licence to omit the word 'limited', of the Board of Trade. This was the course taken by the B.M.A. when it adopted its new model constitution in 1902.

In the years which followed the passing of the Companies Act it seems to have been widely supposed to be the policy of the government to grant no further charters to societies which could avail themselves of its provisions. But if this was ever settled policy it was soon reversed by the incorporation of the Chartered Accountants in 1880. Since that date there has been no hesitation in granting charters where a suitable case can be made out, and numerous professional bodies, from the Surveyors' Institution in 1881 down to the Land Agents' Society in 1929, have been thus incorporated.

Except that it may give members the right to a 'fancy' title, such as 'Chartered Architect', the possession of a charter confers no material advantage.³ A chartered corporation can no more apply its funds to purposes outside the scope of its objects than a limited

¹ In the case of a company applying for a licence to omit the word 'limited', the memorandum must be sanctioned by the Board; but there is nothing to show that this substantially restricts the freedom of the promoters.

² As an example of a 'fundamental' alteration, F. B. Palmer, *Company Law*, 14th ed. (1930), p. 75, quotes the case of *In re Cyclists' Touring Club*, [1907] 1 Ch. 269, where the court refused to sanction an alteration extending the objects of the Club so as to include catering for the wants of motorists, on the ground that the latter were one of the dangers against which cyclists needed protection.

³ The best known of all 'fancy titles', that of 'Chartered Accountant', was not granted by charter, but was adopted, like 'Incorporated Accountant', by the members of certain associations.

liability company, or a voluntary unincorporated association. To all intents and purposes it is as much tied down to its charter and the by-laws made under it as a company is to its memorandum and articles, while it has less freedom both in drafting them in the first instance and in amending them when once adopted.

The grant of a Royal Charter is an exercise of the prerogative. The discretion of the Crown has not been limited in any way by Act of Parliament, but it is exercised through, and on the advice of, the Privy Council. In theory the Privy Council is responsible to Parliament for anything done in connexion with the grant of a charter; but no question relating to this side of its work has ever in fact been raised. Moreover in this, as in certain other matters, it is not the practice of the Privy Council to give reasons for the advice which it tenders to His Majesty; consequently there is no declared policy. There is not even any settled procedure. When a charter is applied for, certain notices must be given, and it is open to any one to memorialize the Privy Council; but though on rare occasions such a course has been followed, the Privy Council is not bound to hold a public hearing and does not normally do so. Nevertheless, despite the absence of any settled rules, it would appear that there does exist a certain tradition in accordance with which applications are dealt with. For instance, there is clearly a tendency to keep down the number of grants, with the object, it may be inferred, of keeping up the prestige which attaches to a grant. It is generally believed that, except in special cases, more than one charter will not be granted in any one profession, and that, so far as applications by professional bodies are concerned, petitions will not be successful where an examination test is not imposed. Again, it has clearly become settled policy to require all by-laws to be submitted for the approval of the Privy Council. On the other hand it is apparent that there are many points where the Privy Council might intervene, but in fact does not do so. For example, though examinations are insisted upon, nothing further is done towards influencing the educational policy of professional bodies. In fact it may be said that there exists in the Privy Council machinery through which, in return for the grant of a privilege, a considerable measure of control could be exercised over many professional associations, but that in practice this valuable opportunity is not fully used.

INTERNAL CONSTITUTION.

Attention has been drawn to the various motives which lead professional men to associate. Among them is the desire to hall-

mark those who have passed certain tests of competence; and the process of hall-marking may profoundly affect the internal constitution of an association which undertakes this function. The first step is to distinguish those who have given evidence of competence by passing an examination and completing a period of apprenticeship or its equivalent. It is usual, however, to take a second step and to supplement the primary hall-mark by a secondary hall-mark distinguishing those who are qualified merely by examination and apprenticeship from those who are additionally qualified by experience. This is done by grading the membership of the association and confining admission to the higher grade to those who possess the higher qualification. The senior grade is generally composed of 'Fellows' and the junior grade of 'Associates', and to the fellowship there is attached a higher age limit, an experience qualification, and, sometimes, an examination test more severe than that which admits to the associateship. The age limit calls for no special comment; for fellows of the R.I.B.A. it is thirty, for the senior grade of members in the Institution of Civil Engineers it is thirty-three. By way of experience qualification the candidate for the fellowship is generally required to show that he has been continuously in practice for a given number of years; in the R.I.B.A. seven years is demanded, in the Institute of Chartered Accountants, five. In the latter instance five years' practice means five years' practice as a principal; but the growth of large firms and of salaried employment in the public service has led many associations to admit assistants to the senior grade in certain circumstances. Thus a candidate for the fellowship of the Incorporated Accountants must show 'that he has been continuously in practice as a public accountant, . . . or has occupied a professional position, which in the opinion of the Council is equivalent thereto, for not less than three years'.¹ When persons in salaried positions are admitted to the senior grade it is generally laid down that the position occupied must be one of 'responsibility'. This test is applied by the Civil Engineers, the Surveyors, the Auctioneers, and the Architects. In the Royal College of Surgeons, the Royal College of Veterinary Surgeons, and the Institute of Actuaries admission to the higher grade is by examination. In the Royal College of Physicians there are three grades; the examination of the Conjoint Board, which admits to the register, also admits to the licentiateship of the College; a further examination, or published work, if accepted, admits to the 'membership'; while the

¹ Article 5 of Articles of Association of the Society of Incorporated Accountants and Auditors.

fellowship is recruited by election from among 'members' who have attained eminence in any sphere, whether medical or not, and non-members who have 'distinguished themselves in any branch of the Science or Practice of Medicine'.¹ A third grade is also found in the R.I.B.A., where the licentiateship includes persons whom it has been thought desirable for reasons of professional politics to admit to membership, but who have never acquired the primary hall-mark. Many professional associations make provision for the election of honorary members, corresponding members, and the like; while students are often admitted to a special grade of membership below the junior grade of practitioners.

Associations which confer more than one hall-mark are thus characterized by an element of hierarchy; but this feature is not found in all professional associations. It is notably rare in the registered professions, where the primary hall-mark is conferred by the State, and where, generally speaking, an association of practitioners admits to a single grade of membership any person who has received the state hall-mark. This is true of the Law Society, the B.M.A., the National Veterinary Medical Association, and the Pharmaceutical Society. The British Dental Association only admits those who are qualified as well as registered, while the Chartered Institute of Patent Agents does not admit those who came on the register in 1888 or 1919 as existing practitioners unless they succeed in passing the final examination. At the same time within the Institute itself, as within the British Dental Association, there is no hierarchy. Nevertheless, though the hierarchical association is unusual, the desire to distinguish those who possess special qualifications is frequently as strong in the registered professions as in the unregistered; but it finds other means of expression. Thus it is common to find provision for entering in the register any special degrees or diplomas; in the pharmacy and teaching professions there is more than one register, while in the medical profession the ancient medical corporations have assumed the role of supplementary hall-marking bodies. Only in the veterinary profession is the familiar type of hierarchy to be found, inasmuch as the State has conferred licensing powers upon a pre-existing association which has then added a supplementary hall-mark of its own.

As a feature of the internal constitution of a large group of associations in the professional world hierarchy thus merits some attention. It is sometimes represented that the professions are ruled by a group of close oligarchies; and hierarchical membership,

¹ By-law LXXII of the Royal College of Physicians.

though it does not imply an oligarchical form of government, clearly provides a basis upon which such a form of government could be erected. As a general rule we find it laid down in the charter or memorandum of association of a professional body that it shall have certain powers, and that of these powers some are to be exercised by the association in general meeting and others by a committee of the association, usually, though not always, styled the council. It follows from this that in any association having a hierarchically graded membership oligarchy will result if only one class of members have the right of voting in the general meeting, or if only one class of members are eligible to sit on the council. In the latter case the degree of oligarchy will depend upon the distribution of powers between the general meeting and the council. In particular there will normally be found, among the powers conferred upon the association, a power to fill in the detail, more or less, of its own constitution, and to vary within limits the entrance qualifications; and in any association where the council is composed of one class of members only, it is important to see where these sub-legislative powers reside.

The constitutions of professional associations are often complicated and sometimes obscure. As an analysis of the factors which may lead to oligarchy, what has been said above is an intentional simplification. For instance in the R.I.B.A., before 1925, associates were entitled to vote at a general meeting, but only when no question affecting the by-laws was under discussion. But though other complicating factors could be cited, what has been said is sufficient for the purpose we have in view.¹ The Royal Colleges of Physicians and Surgeons afford the most extreme instances of constitutional oligarchy. In the case of the Physicians all the powers of the College are vested in the general meeting in which the highest grade of members, the fellows, alone have voting rights. In the case of the Surgeons all the powers, legislative as well as executive, reside in the council which is chosen by and from the fellows only. The Chartered Surveyors' Institution represents an intermediate type. The by-law making power remains to the council, and the qualification for and mode of election to the council are themselves determined by by-law. However, under the by-laws now in force the council is chosen upon a democratic franchise. In the Chartered Institute of Secretaries it is equally the duty of the council, composed of fellows, to frame the by-laws; but they

¹ It should perhaps be mentioned that students and honorary members seldom or never possess corporate rights. But we are only concerned with the distribution of these rights between the various classes of fully qualified members.

require to be approved in general meeting before coming into force. Among the Incorporated Accountants also the council, made up exclusively of fellows, has the sole right of making by-laws, but the examinations are the only matter coming within the province of the by-laws. All other matters fall to be dealt with in the articles of association which can only be amended in general meeting, where, as in the Chartered Institute of Secretaries, fellows and associates have equal voting rights. In the great majority of professional associations at the present day the by-law making power resides in the general meeting, and all qualified members attending the meeting are entitled to discuss and vote upon any question that may arise. It follows therefore that decisions of importance are taken by a body which, in theory at all events, is democratically constituted. As it usually falls to that body to elect the council, it follows also that the council is a democratically chosen body; but it by no means follows that the council is a democratically constituted body. Most commonly in fact, in hierarchical associations, it is not. In the Institute of Actuaries, as in the Chartered Institute of Secretaries and the Society of Incorporated Accountants and Auditors, the council, though elected upon a democratic franchise, is composed exclusively of fellows. The council of the R.I.B.A. consists of roughly sixty members, of whom some forty must be fellows. The council of the Chartered Surveyors' Institution is composed of not more than forty-six persons, of whom not less than thirty must be fellows; and very similar provisions will be found elsewhere.

But before we can say whether a professional association is ruled by an oligarchy or not, we need to look beyond the actual letter of its constitution. An oligarchical constitution in the strict sense can only arise where the membership is hierarchical. But an oligarchical form of government may develop in any association if institutional forces operate to prevent the election to the council of any but senior members. When it is asked what degree of oligarchy is implicit in the strict letter of a constitution, facts and figures can be quoted which will answer the question with fair accuracy. But it is not possible to assess with the same precision those institutional forces which may maintain an oligarchical form of government without the aid of the constitution itself. The kind of situation that arises has been described to us by a Chartered Patent Agent in words that would probably be true of most professional bodies: 'In practice', he says, 'the Council nominees are usually elected, but unofficial candidates who receive strong support are generally nominated sooner or later.' Of the thirty-two

members of the council of the R.C.V.S. in the year 1921, eight had been first elected prior to 1901 and eight prior to 1910; in other words one quarter of the members had been on the council for over twenty years, and another quarter for over ten years. In the Institute of Chartered Accountants, during the session 1926-7, the council consisted entirely of fellows, though fellows and associates are equally eligible for election. Nevertheless it would be unsafe to proceed to condemnation on these grounds alone. In the Institute of Chartered Accountants something like 60 per cent. of the associates are not in practice as principals; and of this 60 per cent. a large proportion are not engaged in accountancy at all, but have acquired the hall-mark of the Institute solely in order to further their prospects in commercial and public employment. It is desirable that the preponderant voice in the government of a profession should be in the hands of the genuine practitioners, and whatever may be said of those who are in the salaried employment of such practitioners, it is clear that members who have gone out into the business world have not the same claim to be consulted. Moreover, it is arguable that institutional forces which tend to concentrate power in the hands of the few may have beneficial results in so far as they make for continuity of policy. We are led therefore to carry the inquiry on to another plane where professional constitutions can be judged not in terms of oligarchy versus democracy, but in terms of a wider standard, and in particular by the extent to which they achieve such intangible ends as vitality and efficiency.

Considered in the light of such a standard, professional associations exhibit the most striking contrasts. The Institute of Chartered Accountants may again be instanced. To the extent that continuity of policy contributes to efficiency, efficiency may be said to be achieved. But vitality is certainly lacking; largely, it appears, because the council is out of touch with the rank and file. The *Accountant*, the recognized organ of the profession, speaks editorially of the need for 'imparting to the Council the new life and energy necessary to a governing body if it is to perform its functions effectively and keep abreast of the times'.¹ The same journal deplures the secretiveness of the council, and urges with some force that 'a formal paragraph in an Annual Report or an occasional hint in the course of an after-dinner speech is poor satisfaction to the anxieties of the rank and file of the profession'.² In the R.I.B.A., on the other hand, vitality and interest have never been wanting, but efficiency has not resulted because policy has

¹ Vol. lxii (1920), p. 170.

² Vol. lxx (1924), p. 802.

too often been at the mercy of the alternating factions which have successively got control of the council.

Though hierarchy and oligarchy may have little connexion with vitality and efficiency, it does not follow that internal organization is of no consequence. A number of experiments in constitution-making have been made by professional associations, and from these certain broad conclusions can be drawn. Perhaps the greatest need of all is adequate machinery for the expression of sectional interests. Specialists, as we have seen, frequently have their own association; and when this is the case all that is wanted is facility for co-operation of the kind afforded by the standing joint committee of the three major associations in the property profession. Where they are not separately organized the specialists should have their own forum for the discussion of their own problems within the framework of the principal association. The Quantity Surveyors' Committee in the Chartered Surveyors' Institution might be the model. The Committee is given great freedom; for example, it conducts its own negotiations with the Ministry of Health, and though its acts require the ratification of the council, this is not normally refused. There may be cases where a specialists' committee of this kind should be allowed to co-opt non-members, as is done by the Insurance Acts Committee of the B.M.A. But while it is important to secure that sectional interests based on common employment or the sub-craft are given full expression, it is certainly of equal importance that country practitioners should have the means of making their wants felt. This necessitates an extensive system of branches, to which substantial powers should be given; a mere dining-club like the organization of London Chartered Accountants is not enough. An efficient organization of county branches and specialists' committees should enable every member who cares to do so to contribute to the work of the association, and should help to keep the council in touch with professional opinion of all grades and to give coherence and stability to its policy. Continuity of policy may be achieved where an association is ruled by a self-perpetuating group of the senior London members; but it will be achieved as well or better where the council is made up, in whole or in part, of representatives of the county branches and the specialists. Such representatives may be expected to bring to their work not only an aptitude for professional politics but also a lively interest in the way it is conducted. For this reason, if no other, it is of great importance that the provincial organization of a professional body should take the form of county branches and not of independent associations linked up with the central authority only

through some clumsy federal machinery. In a hierarchical association provision should also be made for some representation of the junior grade. If at the same time it is thought desirable to maintain a preponderance on the council of those who are in actual practice or in responsible positions, this can be done by providing that at least a certain percentage of its members shall be fellows.

To the council thus constituted there should be given the amplest powers, including the legislative power of amending the by-laws. Indeed, to leave important powers in the hands of the general meeting is not a real safeguard, however the council may be constituted. The ineffectiveness of the shareholders' meeting as an instrument for controlling, or even questioning, the policy of a trading company is well known; and the general meeting of a professional body is equally handicapped. It can never be representative of the association as a whole, and if it were it would be hopelessly unwieldy. In practice it is impossible to secure the attendance of more than a fraction of those who are entitled to be present. At a special general meeting of the fellows and associates of the R.I.B.A. summoned in 1924 to approve or reject a scheme of amalgamation and registration which had been the chief issue in professional politics for more than a quarter of a century, less than 20 per cent. of those who had voting rights attended the meeting. Thus to give power to the general meeting to transact any business beyond the bare minimum required by law is to open the door to institutional oligarchy and to invite the domination of London or of cliques of London members. In a chartered corporation it is not easy to divest the general meeting of substantial powers on account of the difficulties in the way of amending the charter; but in a limited company all that is needed is to provide in the articles of association (which cannot themselves be amended except in general meeting) that the company shall be governed by by-laws, and that the adoption and amendment of the by-laws shall be a matter for the council. Thus it has been the 'deliberate policy' of the B.M.A. to 'reduce the duties of the General Meeting to the least amount compatible with the law'.¹

In large associations there is a risk of the council itself becoming unwieldy; that is to say it must either become so large that it cannot attend to matters of detail and take rapid decisions, or it may keep down its own numbers, but only by sacrificing its representative character. Various expedients have been tried in the attempt to get over this difficulty. For example, the council of the R.I.B.A. has set up an executive committee to deal with matters of routine;

¹ B.M.A.: *Annual Handbook*, 1927-8, p. 99.

but the committee has been given no powers. There would appear to be but one satisfactory method of meeting this problem; namely, the creation of two distinct bodies, a legislature and an executive, each with its own defined sphere. The former should be a fully representative assembly, responsible for all decisions of policy. The latter should have such powers as are necessary to enable it to carry that policy into execution, and for this purpose should be strictly limited in size.

Two professional associations have framed their internal constitution very much along these lines, the B.M.A. and the N.U.T. The aim of the B.M.A.¹ has been the creation of a 'Medical Parliament', large enough to represent all shades of opinion, yet small enough to be governed by a 'sense of homogeneity and of responsibility'.² This is the Representative Body of which mention has been made in Part I. The members are elected annually by territorial constituencies, and they are to all intents and purposes the governing body of the association. The assembly to which they belong 'determines the policy of the Association',³ and has full power to amend the by-laws by which the articles provide that it shall be governed. Executive powers, on the other hand, reside with the council, which has the 'general management of the affairs of the Association, . . . subject to the decisions of General and Representative Meetings'.⁴ The council is elected, in part by the members grouped in territorial constituencies, and in part by the Representative Body. In addition certain officers of the Association have seats on the council *ex officio*, and there are representatives of sectional interests such as Public Health and the Services. Only members of three years' standing and upwards are eligible for election; but this does not vitiate its essentially democratic character. The provincial organization of the B.M.A. has been worked out with equal care. There are divisions and branches, and every member of the Association is a member of both a division and a branch. The divisions form the base of the pyramid, and their areas are so arranged that so far as possible no member shall be debarred from taking part in the work of his division. Several divisions are grouped to form a branch; and the constituencies for the election of members to serve on the Representative Body and the council consist of a division or divisions specially grouped for that purpose. The divisions and branches make their own rules, subject to the approval of the council, and conduct their own

¹ For an account of the constitution of the B.M.A., see B.M.A.: *Annual Handbook*, 1927-8, pp. 68 ff.

² B.M.A.: *Annual Handbook*, 1921-2, p. 78.

³ B.M.A.: *Annual Handbook*, 1927-8, p. 91.

⁴ *Ibid.*, p. 95.

business. Each division and each branch is entitled to receive an annual grant towards its 'approved' expenditure from the branch within which it is comprised or from the council, as the case may be.

The constitution of the N.U.T. resembles that of the B.M.A. so closely that it is unnecessary to describe it in detail. Membership of the Union automatically involves membership of one of its constituent local associations. The local associations elect the Annual Conference which corresponds to the Representative Body in the B.M.A., and the Executive which corresponds to the council. It is significant that these two associations have become the most active and powerful in the professional world. It is perhaps also significant that neither of them has a charter or a hierarchically graded membership.

The Registration Authority

Where the State intervenes in the professional world it is through the agency of the 'register'. There is regulation of a body of persons and thence of their acts; not, as in factory legislation for example, regulation of the performance of certain acts and thence of those who perform them. This type of state intervention is not peculiar to the professions. Hawkers and pawnbrokers are regulated in this way for police purposes; auctioneers and estate agents for revenue purposes. State licensing of doctors and lawyers only differs from state licensing of pawnbrokers and auctioneers in so far as the former aims at distinguishing the qualified from the unqualified, whereas the latter does not. There are certain border-line cases where both objects are in view; for instance, taxi-drivers, who, though licensed primarily for police purposes, are nevertheless required to pass an examination in the geography of London streets before the licence will be granted. So, too, there are cases where the State has intervened for no other purpose than to distinguish the qualified from the unqualified, but where the roll of the qualified has not become known as a 'register'. Thus the names of those who have been called to the bar of any of the Inns of Court together form the 'register' of barristers. In the same way the holders of the Board of Education's three certificates constitute three 'registers' of 'certificated teachers', 'uncertificated teachers', and 'teachers in special subjects'. Sanitary inspectors and health visitors who are certificated by the Ministry of Health, and pilots who are certificated by pilotage authorities acting under the Board of Trade, may also be regarded as belonging to 'registered' vocations.

Control through the mechanism of the register necessitates the appointment of some person or body of persons to decide who is to be qualified for registration. Though the register derives its sanction directly or indirectly from Parliament, Parliament has not, except to some extent in the case of solicitors, attempted to lay down the actual qualifications for admission. This function is deputed, in whole or, in the case of solicitors, in part, to a subordinate authority. The subordinate authority is usually also responsible for keeping the register, and if provision has been made for striking off the register for certain offences, it may fall to it to sit in judgement upon those who have been charged with such offences; while in some professions the authority has power to levy taxation upon the registered, or upon applicants for registration, or both. Where it has all these powers it becomes a kind of statutory governing body for the profession; but frequently they are distributed between different authorities, so that in many registered professions there is no single governing body answering to the principal association in an unregistered profession. Table I shows the present distribution in each registered profession of the functions in question. Some of them are purely ministerial, for instance keeping the register and formally admitting thereto; others, in particular the power to lay down the qualifications for admission and the power to strike off, are of great importance, and it is necessary to inquire with whom they reside. Professional discipline and judicial machinery form the subject of later sections; in the present section attention will be confined to the constitution of that body, here called the 'registration authority', which, in the state registered professions, is responsible for laying down the qualifications for admission. In all but a few exceptional cases this responsibility will be found to have been placed upon either a government department, a professional association, or a special body created *ad hoc* by Parliament.

In most legislation the responsibility for filling in detail omitted from the text of the Act is deputed, along with more specifically administrative functions, to the relevant department. In the case of professional registration bills, however, it has usually been the aim of the promoters to secure, not only registration, but also professional self-government. Consequently it has not often happened that a government department has been entrusted with the functions of a professional registration authority. In four instances only has this course been followed.¹ The Merchant Shipping Act,

¹ Five if the pilots are included. Its control over the pilotage authorities at

TABLE I
PROFESSIONAL GOVERNING BODIES

<i>Profession.</i>	<i>Keeps Register.</i> Benchers of Inns of Court	<i>Admits to Register.</i> Benchers of Inns of Court	<i>Prescribes Qualifications</i>		<i>Strikes off Register.</i> Benchers of Inns of Court
			<i>in first instance.</i> Council of Legal Education	<i>in last resort.</i> Benchers of Inns of Court	
Solicitors	Law Society	Master of the Rolls	Law Society	Parliament	Discipline Committee
Patent Agents	Board of Trade		Chartered Institute of Patent Agents	Board of Trade	Board of Trade
Doctors	G.M.C.		Statutory licensing bodies	G.M.C.	G.M.C.
Dentists	Dental Board		Statutory licensing bodies	G.M.C.	G.M.C. on report of Dental Board
Nurses	General Nursing Council		General Nursing Council		General Nursing Council
Midwives	Central Midwives Board		Central Midwives Board		Central Midwives Board
Veterinary Surgeons	R.C.V.S.		R.C.V.S.		R.C.V.S.
Pharmaceutical Chemists	Pharmaceutical Society		Pharmaceutical Society		None
Chemists and Druggists	Pharmaceutical Society		Pharmaceutical Society		Privy Council
Mine Managers	Board of Trade		Board of Mining Examinations	Board of Trade	Special Court
Merchant Navy	Board of Trade		Board of Trade		Special Court
Registered Teachers	Teachers Registration Council		Teachers Registration Council		Teachers Registration Council
Certificated, &c., Teachers	Board of Education		Board of Education		Board of Education
Architects	Architects' Registration Council	Architects' Registration Council on report of Admission Committee	Board of Architectural Education in conjunction with Architects' Registration Council		Architects' Registration Council on report of Discipline Committee

the Education Act, the Patents and Designs Act, and the Coal Mines Act were government measures of their day, introduced to reform and codify large branches of the law, and not primarily with a view to professional regulation. Indeed, the 'professions' of merchant captain, 'certificated' and 'uncertificated' teacher, and mine manager can hardly be said to have existed before the State called them into being. At the time when the law affecting merchant shipping and coal mines came up for review, it was considered that, for the protection of the public, certain functions, including the navigation of ships at sea and the supervision of coal mines, should not be performed except by persons holding certificates of competency. The granting of certificates was put in the hands of the departments responsible for the general administration of these Acts, at that time the Board of Trade and the Home Office respectively. The Board of Trade thus became the registration authority for the merchant navy, and has since succeeded to the duties of the Home Office as registration authority for colliery managers. In each case the department has complete control over the qualifications for entry, and is under no obligation to consult representatives either of the practitioners or of the institutions where instruction and training are given.¹

Under the Education Acts the position is somewhat different. Parliament has authorized the Board of Education to make grants out of public moneys to local education authorities, provided they fulfil such requirements in respect of efficiency and so on as the Board may prescribe. In pursuance of these powers the Board have made regulations requiring all teachers in grant-aided elementary schools to possess the Board's certificate. Three certificates are granted corresponding to the three classes of 'certificated teachers', 'uncertificated teachers', and 'teachers in special subjects'; and in this indirect way three professional registers have been called into existence with the Board of Education as registration authority in each case.²

The profession of patent agent, on the other hand, was already organized in the Institute of Patent Agents before registration was introduced. Consequently, although the administration of the Act,

the ports entitles the Board of Trade to be regarded as the registration authority for this vocation.

¹ Under the Coal Mines Act the Home Secretary (now the Board of Trade) is bound to set up a Board for Mining Examinations. But professional representatives need not be appointed to sit on it, nor need its advice be taken; see above p. 152.

² In the same indirect way Parliament may be regarded as having set up registers of health visitors and sanitary inspectors with the Ministry of Health as registration authority.

including the responsibility for laying down the qualifications, was left with the Board of Trade, the Board, in the exercise of their rule-making powers, have delegated a considerable share of their duties as registration authority to the Institute (now the Chartered Institute). That body has the 'entire management and control' of the examinations;¹ though the Board prescribe the period of practical training and retain the right to annul any regulations made by the Chartered Institute in pursuance of the powers delegated to it.

In the case of solicitors, pharmacists, and veterinary surgeons, Parliament has deliberately placed the duties of registration authority on a pre-existing association of practitioners. Under the Pharmacy Acts admission to the two registers of pharmaceutical chemists and chemists and druggists is controlled by the Pharmaceutical Society. Under the Solicitors Acts the Law Society occupies a position more nearly resembling that of the Chartered Institute of Patent Agents under the Rules of the Board of Trade. The Society has again the 'entire management and control' of the examinations,² though, unlike the Chartered Institute, it exercises this control by statute and not during the pleasure of a government department. But Parliament has prescribed the period of articles, and how much of that period shall be remitted to those who have graduated at a university. The Society has power to exempt the holder of a law degree at a university from certain of the examinations; and this power it has exercised. Thus, although in this profession it is the association of practitioners which more than any other body answers to the definition of registration authority, the association must be regarded as sharing that authority, not only with Parliament which has so closely circumscribed its discretion, but also, by its own delegation, with the law faculties of the universities.

Despite the powers and duties that have been laid upon them, neither the Law Society nor the Pharmaceutical Society has been deprived of its voluntary character; but with the R.C.V.S. it has been otherwise. The Veterinary Surgeons Act provided that the membership roll of the College should constitute the register.³ The council of the College thus automatically became the registration authority, while membership of the College became obligatory for all future candidates for registration. The College continues

¹ *Register of Patent Agents Rules*, 1920, clause 8.

² 40 & 41 Vic., c. 25, s. 7.

³ There is a second register of 'existing practitioners', comprising those who, being in practice at the date of the Act, were not, and have not since become, members of the College.

to carry out its duties under its charter, which provides that the council shall be the sole examining authority for the College. The council has power to admit to the examinations only those candidates who are students of certain veterinary schools which were in existence at the time the charter was granted in 1844, and of such other schools as may become 'affiliated' to the College by the Home Office; but the council cannot accept the examinations of the 'affiliated' schools as exempting from its own examinations, nor are the schools represented on the council, which is chosen by all the members of the College from among those members who are over twenty-six years of age and have been in practice not less than five years.¹

In six registered professions, namely, medicine, dentistry, nursing, midwifery, teaching, and architecture, a special body has been created *ad hoc* to perform the duties of registration authority. The special body has great advantages for this purpose, inasmuch as government departments, teaching institutions, and practitioners can all be given representation upon it. However, no single model has been followed; indeed, there is the utmost diversity, as will be seen in Table II. The table includes the registration authorities for the six professions mentioned, and, in addition, the Dental Board.² The last-named is not concerned with the qualifications for admission to the dental profession, but it undertakes other important governmental duties, and is shown here because it conforms to the type of a special body. In the medical and dental professions the registration authority has certain peculiar features which make it convenient to leave them to the last; and we may begin by considering the Teachers Registration Council, since it has something of the character both of a professional association and of a special body. Except for the chairman every member of the Council must be a registered teacher; and, apart from the chairman, who is co-opted by the Council, and the twelve university representatives, all the members are elected by the practitioners.³ In 1930 all those who were then on the register were formed into the Royal Society of Teachers, and the Teachers

¹ But only fellows of the College (as to whom see above, p. 333) are eligible for appointment to the Board of Examiners; clause 1 of Supplemental Chamber of 1892. On the constitution of the R.C.V.S., see F. Bullock, *Handbook for Veterinary Surgeons*, 1927.

² The Architects' Registration Council, which is also a special body, and apparently indeed (see Appendix II) shares with the Board of Architectural Education some of the functions of registration authority, is not shown because its composition will vary with the membership figures of certain associations.

³ If it chooses the Council can co-opt two additional members; but they must be registered teachers.

TABLE II
CONSTITUTION OF SPECIAL BODY

<i>Professions with licensing bodies.</i>	<i>Appointed by licensing bodies.</i>	<i>Elected by the registered.</i>	<i>Appointed by Privy Council.</i>	<i>Appointed by other Government Departments.</i>	<i>Other.</i>	<i>Total.</i>	<i>Must be persons registered under the Act.</i>	<i>Must be persons not registered under the Act.</i>
Doctors (General Medical Council)	27	6*	5	—	—	38†	15‡	—
Dentists (General Medical Council)	15	—	8	—	18§	41||	3	15†
[Dental Board]	—	6	1	3	3	13	—	3
<i>Professions without licensing bodies.</i>	<i>Appointed by universities and professional schools.</i>	<i>Appointed by professional associations or other bodies representing profession.</i>						
Nurses	—	—	2	7	—	25	16	2
Midwives	—	3	—	4	7	14	4	9
Registered Teachers	12	—	—	—	1-3	49-51	48-50	1
Architects (Board of Architectural Education)	22	26	—	—	27	75	24	—

* 7 after 1931. † 39 after 1931. ‡ 16 after 1931. § 19 after 1931. || 42 after 1931.

Registration Council became the executive of the Society. The teachers' register has thus been assimilated to the register of veterinary surgeons; and every registered teacher automatically becomes a member of the Society. There is, however, this difference: the council of the R.C.V.S. is elected by the members of the College, but the Teachers Registration Council is made up, as to nearly one-quarter, of nominees of the universities, which have few registered teachers on their staffs. Also, the Teachers Registration Council has power to recognize the examinations of other bodies; indeed it has never held an examination of its own.

The General Nursing Council and the Central Midwives Board call for less comment. We may note the absence in both cases of any representatives of teaching institutions; also that in the case of the Central Midwives Board the professional representatives are few in number and are not elected by the practitioners but appointed by the professional association. The seven 'other' members of the Central Midwives Board are appointed by various bodies representing the medical profession and the local authorities. The Board of Architectural Education reflects in its constitution the difficulties that were encountered by the promoters of the recent Act and the compromises to which they were driven. It is likely to prove far too unwieldy to discharge its duties with efficiency, and it is particularly noteworthy that the 'other' members form the largest single contingent. Again, the professional representatives are not elected but appointed; and it is surprising to find no nominees of government departments.¹

Like the Law Society and the Teachers Registration Council, the Board of Architectural Education has power to recognize other examinations than its own. In architecture, therefore, it is again possible to regard the functions of registration authority as being in some degree split up. In medicine and dentistry, however, the registration authority is multiple in an altogether different sense. To say that the Law Society shares its duties with Parliament is only to say that, like other registration authorities, it operates within the limits laid down for it by the legislature, though in its case the limits are admittedly narrow. To say of it, or of the

¹ It should be observed that, although government departments are not represented on the Board of Architectural Education, government nominees do sit on the Architects' Registration Council which appoints twenty-four members to the Board. Nevertheless, the twenty-four members appointed to the Board must be registered architects, and it is therefore unlikely that any of the government nominees on the Council will ever be among them. It should also be noted that the Council apparently (see Appendix II) performs some of the functions of registration authority.

Teachers Registration Council or the Board of Architectural Education, that it shares them with the teaching institutions is only true so long as it is understood that such powers as the latter enjoy could be resumed by the Society, or the Council, or the Board, at pleasure. In the case of doctors and dentists, on the other hand, the licence to practise, which gives the right to be registered, is conferred, not by the special body, but by certain universities and associations of medical practitioners. Moreover, their licensing powers are secured to them by statute, and not at the discretion of the special body. The licensing authorities hold the examinations and lay down the course of training, both practical and theoretical, which has to be undergone. But the special body has important supervisory powers. It can appoint inspectors, and if not satisfied with the requirements prescribed by any licensing authority, can report the case to the Privy Council, which can then, if it thinks fit, order that the degree or diploma of the licensing body shall cease to confer the right to be registered. Such a drastic step as this has never been taken; but pressure is constantly being exerted upon the licensing authorities to bring their curricula into line with the views of the special body.

The General Medical Council is the special body which supervises the licensing authorities in both medicine and dentistry. Hence its appearance twice over in the table. Its constitution differs slightly according to the nature of the business which it is sitting to transact; but the difference is so small that it appears at once as a body curiously unsuited to its functions as dental registration authority. As constituted for the transaction of medical business, the only noteworthy feature of the G.M.C. is the small representation given to the registered¹ and to the Privy Council relatively to that accorded to the licensing authorities. As constituted for the transaction of dental business, on the other hand, the representation of the licensing authorities drops from twenty-seven to fifteen, since twelve universities and medical corporations which license in medicine do not license in dentistry. The representatives of these bodies remain permanently on the Council, however, and, with the elected representatives of the medical practitioners, who also sit permanently, make up the total of eighteen 'other' members of the G.M.C. considered as registration authority for dentists. Equity suggests that their seats should, during the transaction of dental business, be occupied by the elected representatives of the dental profession, which is at present

¹ An increase of one in the number of members elected by the practitioners was authorized in 1931.

TABLE III
GOVERNMENT CONTROL OF REGISTRATION AUTHORITY

Profession.	Through Parliament		Through Privy Council				Through relevant government department			Through other government departments		Through intervening special body.*
	in its legislative capacity.	through rules lying on table.	super-session.	approval of rules.	appointment of members.	inspection of examinations and approval of examiners.	direct.	approval of rules.	appointment of members.	approval of training institutions.	appointment of members.	
Barristers												
Solicitors	x											
Patent Agents		x					x					
Doctors (G.M.C.)			x		x							
Dentists (G.M.C.)					x							
Nurses		x			x			x	x		x	
Midwives								x				
Veterinary Surgeons										x		
Pharmaceutical Chemists				x								
Chemists and Druggists				x		x						
Mine Managers							x					
Merchant Navy							x					
Registered Teachers												
Certificated and Uncertificated Teachers							x					
Architects' Registration Council									x		x	
Board of Architectural Education												x

* See Appendix II.

represented only in the very indirect sense that the three additional nominees of the Privy Council must be registered dentists chosen from among the members of the Dental Board.

In three professions the character of the registration authority is so exceptional that it cannot be classified as either a government department, an association of practitioners, or a special body set up *ad hoc* by Parliament. The registration authorities for barristers and notaries owe their peculiarity to the fact that they have come down almost unchanged from medieval times. Admission to the Bar is controlled by four ancient guilds of barristers; to the notarial profession, by a nominee of the Archbishop of Canterbury, who is to-day always a judge and therefore a barrister by training, and in London by one of the ancient City companies in addition. Admission to the national civil service is under the control of the Civil Service Commission, a body composed exclusively of civil servants but responsible only to the Crown. It can scarcely be regarded as a registration authority in the sense here given to that term, for there can scarcely be said to be registration of civil servants in that sense. Though the State imposes a test upon those about to enter its service, the test is such as might be imposed by any employer upon candidates for employment in his service. They are not tests imposed by the State upon persons about to enter employment other than its own, which is the characteristic feature of state intervention in the professional world.¹

The State intervenes with the object of distinguishing authoritatively the qualified from the unqualified. By so doing it assumes ultimate responsibility for the manner in which the line is drawn; and though the functions of registration authority may be delegated to a government department, professional association, or special body, these authorities are seldom free from all further control. It is true that where the registration authority is an archaic survival from medieval times it may be almost wholly without external supervision. From the Inns of Court there is a somewhat shadowy right of appeal to the judges; from the Master of the Faculties an even more restricted right of appeal to the Lord Chancellor; while the Scriveners' Company is not even subject to this measure of control. But these cases are exceptional; and generally speaking there are certain channels through which some control over the policy of professional registration authorities is

¹ The civil service has some claim to be regarded as a 'socialized' profession, and it will be considered from this point of view hereafter. It should be noted, moreover, that the case of the civil servant differs even from that of the certificated teacher, who, though the State may contribute to his salary, enters the employment, not of the State, but of a local authority.

possible. Table III shows the methods in use in different professions. They are various, but they require little comment. The method of supervision by Parliament in its legislative capacity may be said to be applicable in theory in every registered profession; but it is not in fact employed except among solicitors. The mechanism of control through rules lying on the table is familiar. It is usually provided that if an address is presented by either House within a specified number of days the rules can be annulled by Order in Council; and the amendment of a rule made by the General Nursing Council was secured in this way in 1923. Where supervision is through a government department it will be seen that it is sometimes through the relevant department, sometimes through the Privy Council, and occasionally through some other department. Where the authority is itself a government department, supervision may be said to be continuous; and where the authority is a special body, provided the government has a right of nomination, influence can always be brought to bear through the government nominees. With regard to the other methods, it is only necessary to draw attention to control through the right to disallow rules or by-laws, and through the power to supersede. This latter power has been expressly given in one instance only, that of the G.M.C. as registration authority for doctors.¹

The registration authorities whose structure we have attempted to analyse are in a very real sense organs of the State. Though they find no place in the text-books, they may even be said to be part of the constitution. Their composition, the degree to which they should be subject to state control, and the channels through which that control should be exercised are therefore questions of the first importance. But they are questions which cannot be answered until we have reviewed the educational system which it is the principal function of the authorities to supervise.

Professional Monopoly

The State sets up a register with the object of distinguishing the qualified from the unqualified, and it has not as a rule concerned itself with nice refinements or degrees of professional skill which might blur this fundamental distinction. In the initial stages

¹ Both the Architects' Registration Council and the Board of Architectural Education are shown in the table. The only channel through which the government can influence the latter is through the former; hence control 'through intervening special body' appears as a distinct method of control, though as we have pointed out above (p. 348, n. 1) little effective control is possible through this channel.

it may be necessary to distinguish between those who came on the register by virtue of their attainments and those who came on as 'existing practitioners' in recognition of their claim to have their means of livelihood safeguarded; but any distinction that may be so drawn is normally a temporary one.¹ An exception is to be found in the pharmaceutical profession. When Parliament decided to reserve to registered persons the function of keeping open shop for the sale of poisons, a register of chemists and druggists was set up, distinct from the pre-existing register of pharmaceutical chemists, and composed in the beginning of 'existing practitioners' only. But this register was not closed once and for all in 1868. It continues to be recruited by examination and is now in fact the register of the qualified, the earlier register of 1852 having come to stand for a higher qualification like the senior grade of members in an association. Thus the existence of two registers has become permanent. The teaching profession is another exception. The shortage of fully-trained teachers has led the Board of Education to institute an additional register of 'uncertificated teachers', whom they do not regard as completely qualified, but who for the time being are 'recognized' for grant purposes when employed by local authorities. The register of uncertificated teachers is therefore not unlike a register of 'existing practitioners'; though some recruitment still takes place, it is anticipated that eventually this will cease. Outside the teaching and pharmaceutical professions the State takes no cognizance of superior and inferior qualifications, beyond providing, as in the medical and dental professions, that certain degrees and diplomas may be entered in the register in a separate column. Under the Dentists Acts the 'existing practitioners' are distinguished in the same way. In the column for degrees and diplomas they are entered as 'Dentists 1921'.

The State, having set up a register distinguishing the qualified from the unqualified, may leave it at that; members of the public are then free to consult the unregistered practitioner if they choose. This is the position in nursing and architecture, and also in teaching so far as the register maintained by the Teachers Registration Council is concerned. Admittedly the mere existence of a register has the effect, as it is intended it should, of discouraging practice by the unqualified; but in many professions the discouragement has been more deliberate, while in some practice by the unqualified has been prohibited either in whole or in part.

¹ As for example under the Veterinary Surgeons Act, which provided that such persons should be 'placed on a separate register under the heading of "Existing Practitioners"': 44 & 45 Vic., c. 52, s. 15 (1).

For these purposes a variety of devices have been resorted to. Among those which are designed to discourage rather than to prohibit practice by the unqualified, one of the most common takes the form of restriction of the right to sue for fees. It has been employed in the case of solicitors, doctors, dentists, and veterinary surgeons; but its deterrent effect is slight. The unregistered practitioner is merely debarred from bringing an action after the event; there is nothing to prevent his demanding the fee before he renders the service, while in the great majority of cases he can safely rely upon the honour of his clients. Indeed, fellows of the Royal College of Physicians are placed by a by-law of their College under a similar disability, and their incomes are not believed to suffer in consequence.¹

Parliament generally attaches a penalty to any attempt by an unregistered person to represent himself as being on the register. Only in the case of the register kept by the Teachers Registration Council has no express provision of this kind been made. In the professions of nursing and architecture, those whose names are on the register have been specifically empowered to describe themselves as 'registered nurses' and 'registered architects' respectively; while in other professions Parliament has gone further and has sought to prohibit the unregistered man from using the title which ordinarily describes his calling. Anybody can call himself a 'doctor', provided he makes no claim to be qualified for registration when he is not;² but the unregistered person who describes himself as a 'veterinary surgeon' is liable to a fine of £20. Many other titles are similarly protected; for example, 'solicitor', 'patent agent', 'dentist', 'pharmacist'.³ Even in this form, however, protection of title is seldom in itself an effective deterrent to practice by the unregistered. Previous to 1919 the unregistered patent agent used to call himself a 'Patent Expert', and it was held that this constituted no infringement of the law as it then was.⁴ It

¹ The barrister is also without legal remedy if his fee is not paid. But his position is somewhat different from that of the F.R.C.P., because he looks for payment to his professional and not his lay client, and it can be made very unpleasant for a solicitor who does not pay counsel's fees.

² Indeed a person whose name has been erased from the medical register can continue to describe himself as a 'doctor of medicine', if he is in fact the holder of such a degree, and if, as may sometimes be the case (see below, p. 415), it has not been withdrawn from him in consequence of the erasure of his name.

³ So, too, it appears is the title 'chemist', which, strictly, may be used only by members of the profession of pharmacy. Such at least was the interpretation put upon the Pharmacy Act, 1868, by the Departmental Committee on the Poisons and Pharmacy Acts; see their *Report*, 1930, Cmd. 3512, p. 14.

⁴ See the cases cited footnote 3, p. 59, above. Under the present law unquali-

seems that much may depend upon the precise wording of the Act. Those provisions of the Dentists Act, 1878, which deal with this matter have lost their importance since complete prohibition of practice by the unqualified was introduced in 1921; but it is of interest to contrast them with the corresponding sections of the Veterinary Surgeons Act, 1881, which still remains in force. Under the 1878 Dentists Act the unregistered person was forbidden to use the titles 'dentist' and 'dental practitioner' and any description 'implying' that he was registered or 'specially qualified'.¹ In the Veterinary Surgeons Act there are two relevant sections. By the first, any person not a member of the R.C.V.S. is forbidden to use any description 'stating or implying' that he is a member.² By the second, any unregistered person is forbidden to use the title 'veterinary surgeon' or any description 'stating that he is a veterinary surgeon . . . or is specially qualified'.³ The distinction is certainly a fine one, and the law, even now, is not wholly free from doubt. In one respect the two Acts were interpreted alike; it was decided that the unregistered person could apply any description he liked either to the work he did ('painless extractions') or to the place where he did it ('Canine Surgery' or 'Dental Surgery'). In regard to descriptions used by the unregistered person of himself and referring to his qualifications, it was settled by the House of Lords in the case of *Bellerby v. Heyworth*⁴ that an unregistered dentist was merely forbidden to use a description suggesting that he was qualified for registration. Previous to this decision the cases under the Veterinary Surgeons Act had gone the other way; and, though it is possible that they are now overruled, that point has never been expressly decided, and Scrutton J., who reviewed the cases under both Acts in his judgement in *The Royal College of Veterinary Surgeons v. Kennard*, gave it as his opinion that the two Acts could not be interpreted alike.⁵ If his view is correct, then it remains the law that an unregistered

fied practice is forbidden altogether in the patent agency profession. This makes prosecutions for infringement of the title unnecessary.

¹ 41 & 42 Vic., c. 33, s. 3.

² 44 & 45 Vic., c. 62, s. 16.

³ *Ibid.*, s. 17 (1).

⁴ [1910] A.C. 377. Their lordships based their decision upon the reasoning of Lord O'Brien L.C.J. in the Irish case of *Byrne v. Rogers*, [1910] 2 I.R. 220, where he argued that the words 'specially qualified' must mean, not personally qualified to perform dental work, but specifically qualified for registration, because the preamble to the Act, in explaining its object and purpose, used the same wording and recited that it was 'expedient that provision be made for the registration of persons specially qualified'.

⁵ [1914] 1 K.B. 92, at p. 99. It should be emphasized that Scrutton J.'s observations on this matter were *obiter*. The point was not one which it was necessary to settle in order to decide the question at issue.

veterinary surgeon is forbidden, not only (under the first of the two sections referred to above) to use any description suggesting that he is qualified for registration, but also (under the second) to use any description suggesting that he is personally qualified to perform veterinary work. Thus the unregistered dentist could describe himself as a 'Dental Specialist', and consequently the protection of title accorded to dentists before 1921 amounted to little more than the protection of the description 'registered nurse' given by the Nurses Registration Act. The unregistered veterinary surgeon, on the other hand, cannot describe himself as a 'Canine Specialist'; and since quacks are rare in the veterinary profession, it is reasonable to infer that protection of title, as hitherto interpreted in that profession, has not been without its effect in bringing about a situation which approximates to one in which irregular practice is not only discouraged but prohibited.

Prohibition may be quite general or it may be limited to specific acts, or to specific acts when done for gain or reward. General prohibition is found in the Patents and Designs Act, 1919, and in the Dentists Act, 1921, where it is provided that no person shall 'practise as a' patent agent or dentist, as the case may be, unless his name is on the register.¹ The functions of the patent agent and the dentist are not enumerated; but whatever they may be, the unregistered person is prohibited from performing any of them. More usually the prohibited functions are specified. Thus in the legal profession, no one but a barrister is entitled to be heard as an advocate in any of the superior courts of law; no one but a solicitor is permitted to 'sue out any writ or process, or commence, carry on, solicit or defend any action, suit or other proceeding';² and severe penalties are imposed upon any person, not a barrister, solicitor, or notary, who 'for or in expectation of any fee, gain, or reward, draws or prepares any instrument relating to real or personal estate, or to any proceeding in law or equity'.³ Under the Midwives Acts the prohibition is equally specific. Penalties are liable to be incurred by any person, other than a doctor or a certified midwife, who 'attends a woman in childbirth', except under the direction and personal supervision of a qualified medical man, or in a case of sudden and urgent necessity.⁴ Under the Coal Mines Act, every mine to which the Act applies must be subject to the 'daily personal supervision' of a certificated manager.⁵ Under the Pharmacy Act of 1868, an unregistered person is for-

¹ 9 & 10 Geo. V, c. 18, s. 18, and 11 & 12 Geo. V, c. 21, s. 1 (1).

² 6 & 7 Vic., c. 73, s. 2.

³ 54 & 55 Vic., c. 39, s. 44.

⁴ 16 & 17 Geo. V, c. 32, s. 1.

⁵ 1 & 2 Geo. V, c. 50, s. 3 (1).

bidden to 'sell or keep open shop for retailing, dispensing or compounding' any scheduled poison.¹ Only a registered medical practitioner can sign a valid death certificate, or, 'for reward either direct or indirect, treat any person for venereal disease, or prescribe any remedy therefor' in any area to which the Venereal Disease Act has been applied.²

The instances given of prohibition of the performance of specific acts are only some among many. Hardly less numerous are the cases where prohibition relates to specific appointments. Thus no one but a barrister is eligible to be appointed a judge; no one but a registered medical practitioner can have his name placed upon the medical list under the National Health Insurance Act; no one but a registered veterinary surgeon is eligible for the Army Veterinary Service. Indeed, instances could be multiplied almost indefinitely.³ Among the most important are the group of appointments in the merchant navy which must be filled by persons holding certificates under the Merchant Shipping Act.

Where the prohibition is general, as in dentistry and patent agency, there results what is sometimes referred to as a 'closed' profession. Where the prohibition relates to specific acts or appointments, closure may or may not result. In the legal profession, for instance, the prohibited acts are so much of the essence of a practice that the profession is closed in both its branches. In the pharmaceutical profession it is otherwise; poisons are not the only articles retailed in a drug store, and consequently there are drug stores not kept by registered pharmacists. In the merchant navy the appointments reserved to certificated men cover virtually the whole field of that profession, and it may therefore be regarded as closed. The appointments reserved to medical men, on the other hand, by no means cover the field of medical practice, nor do the prohibited acts; closure therefore does not result.

It is apparent that, where a profession is closed in the sense here given to that word, a valuable monopoly has been secured to the registered. Even where closure has not been brought about, some monopolistic advantage accrues if important functions or

¹ 31 & 32 Vic., c. 121, s. 15.

² 7 & 8 Geo. V, c. 21, s. 1.

³ Thus: 'No person shall hold any appointment as physician, surgeon or other medical officer either in the military or naval service, or in any emigrant or other vessel, or in any hospital, dispensary, infirmary or lying-in hospital, not supported wholly by voluntary contributions, or in any lunatic asylum, gaol, penitentiary, house of correction, house of industry, parochial or union workhouse or poorhouse, parish union or other public establishment, body or institution, or to any Friendly or other society affording mutual relief in sickness, infirmity or old age, or as a medical officer of health, unless he is registered under this Act.' 21 & 22 Vic., c. 90, s. 36.

appointments are reserved, or if, as in the veterinary profession, protection of title has been given in such a form that it acts as a real deterrent to unqualified practice. In either case the monopoly or advantage is legal in origin. But the actual privileges attaching to registration are seldom limited to the legal privileges. The nursing profession, for example, has been given no legal privileges, beyond some protection of the title 'registered nurse'; yet in practice those who are on the register enjoy an almost complete monopoly of hospital appointments. This comes about because the hospital takes the advice of its medical staff, and the medical staff urge the employment of registered nurses only. In fact it may be stated as a broad general rule that, where there is a register, some monopolistic advantage, beyond what the law has given them, will accrue to those whose names are on it.¹

These additional advantages, which derive not from statute but from a self-denying ordinance of the client or employer, we distinguish as 'institutional' advantages. They accrue in a registered profession because of the prestige and standing which registration carries with it. But institutional monopoly is not a feature of the registered professions only. Some degree of monopolistic advantage may be won by a particular group of practitioners in an unregistered profession. In that case it accrues, not to the registered, since there is no register, but to the members of an association of practitioners; and it does so whenever the association succeeds in making membership as much a hall-mark of qualification as admission to the register in a state-regulated profession. It is the aim of every association in the unregulated professions to do this; and indeed not in the unregulated professions only. The Royal Colleges of Physicians and Surgeons, voluntary associations of practitioners within the framework of the medical register, have each imposed higher qualifications for admission to the fellowship grade, designed to give it higher prestige, and to secure to the 'F.R.C.P.' and the 'F.R.C.S.' greater advantages, than those which accrue to the ordinary registered medical man. But though the prestige which attaches to membership depends upon the qualifications demanded, the association cannot demand high qualifica-

¹ This may occur even where the profession is already closed, as in the case of the lawyers, whose monopoly of conveyancing has brought them valuable work in the field of property management. The teaching profession forms an exception in so far as the existence side by side of two concurrent systems of registration has rendered one of them nugatory. Two local education authorities are believed to give privileges to registered teachers; but it seems unlikely that their example will be widely followed.

tions until it has acquired prestige. Hence the building up of an institutional monopoly is a matter of time and difficulty, though, once attained, it is not easily lost.

The degree of institutional monopoly varies from profession to profession. Certain circumstances are more favourable to its arising than others; particularly a limited clientele among the informed and well-to-do. Of this the actuaries afford a striking instance, inasmuch as the Institute and the Faculty enjoy a complete monopoly of the actuarial appointments in life offices in this country. The position in the accountancy profession is also instructive; there is no monopoly, indeed competition with outsiders is fierce, but only for the less remunerative types of work. We have seen that among the auditors of the 5,500 companies whose shares are officially dealt in on the London Stock Exchange, only a very small percentage are not Chartered Accountants.

Monopolistic advantage is thought to be more easily attained if the association can secure legal protection of title for its members. This can sometimes be done. The exclusive legal right to use the only designation properly descriptive of any professional function cannot be acquired except by statute. Nothing but an Act of Parliament can stop any man who pleases from calling himself 'architect', 'accountant', 'surveyor'. But protection may be obtained for certain variants of these titles. For example, if a practitioner induces a client to pay him a fee for professional services or advice by describing himself as the member of an association to which he does not belong, not only is he liable in damages to the client, but he is also guilty of a criminal offence for which he can be prosecuted by the association. But a description of this kind is usually too cumbrous to be generally used by the practitioners or easily memorized by the public. Furthermore, a prosecution under the law of false pretences, even if successful, affords little security against repetitions of the offence. What is wanted is a short title or initials, easily committed to memory, and protected by the more effective legal sanction of the injunction, which exposes the offender who repeats the offence to risk of imprisonment for contempt of court. In 1893 it was decided in the Scottish Court of Session¹ that the initial letters 'C.A.', standing for 'Chartered Accountant', would be protected in this summary way,² on the ground that the words they stood for were indicative of membership of an association of accountants incorporated by

¹ *The Society of Accountants in Edinburgh v. The Corporation of Accountants Ltd.* (1893), 20 R. 750.

² By an interdict, the equivalent in Scots Law of the injunction in English Law.

charter. In 1907¹ similar protection was accorded in the English courts to the title 'Incorporated Accountant', though on somewhat different grounds. The law as then laid down may be stated briefly as follows: a professional title, not necessarily descriptive of membership of any association, or indeed descriptive of anything at all, will be protected by injunction if it can be shown to have become associated in the public mind with membership of a particular body, and if, which is important, membership of that body implies a certain standard of training and qualification.

Much effort has been expended by professional associations in the attempt to acquire for their members distinctive titles which will be protected by law. In some instances, that of 'Chartered Architect' for example, the right to the title has actually been granted by charter, though it is doubtful if this affects the question of protection, and in most cases the association has simply adopted the title itself. This was the origin of 'Chartered Accountant', 'Chartered Secretary', and 'Chartered Surveyor', as well as of 'Incorporated Accountant', 'Incorporated Secretary', and 'Certified Accountant'.² It is not in the selection of the title, however, that the difficulty resides, but in getting its meaning so well understood that goodwill becomes attached to it. In practice it has not proved at all easy to familiarize the public with the meaning of professional titles of this kind. There has been greater success with initial letters, which, from the point of view of legal protection, stand upon the same footing as a title. Among titles, only one has become really widely known—that of 'Chartered Accountant'.³ This title is certainly better understood than the initial letters 'C.A.', 'F.C.A.', and 'A.C.A.', which are also in use in the various chartered associations of accountants. But elsewhere the opposite is generally true. There are many people who have never heard of a 'Chartered Architect' or a 'Chartered Civil Engineer', who nevertheless appreciate that the abbreviations 'F.R.I.B.A.' and 'M.Inst.C.E.' stand for high qualifications in architecture and engineering respectively. But here again there is a difficulty to be faced, by the newer associations at any rate; it is inconceivable

¹ *The Society of Accountants and Auditors v. Goodway and the London Association of Accountants Ltd.*, [1907] 1 Ch. 489.

² Used by the London Association of Accountants.

³ Indeed the very success which has attended the popularization of this title has provoked legislation in South Africa deliberately aimed at breaking down the monopoly which it has helped to create. The opposition of the English Institute was unable to prevent the passing of a Registration Act which confers upon every practitioner registered in South Africa the right to call himself a 'Chartered Accountant (S.A.).' The addition of the letters 'S.A.' was the only concession that could be obtained.

that more than a small number of different combinations of initials can be made sufficiently familiar to the public at any one time for professional associations to attract custom to their members thereby. 'The Council urge upon every Member that on all occasions, in advertisements, on stationery, posters and cards, they should seize the opportunity of making "F.A.L.P.A." and "A.A.L.P.A." known and respected.'¹ But it is hard to believe that the day is at all near at hand when it will be common knowledge that these mystic symbols denote respectively a fellow and an associate of the Incorporated Society of Auctioneers and Landed Property Agents.

Where an association has secured legal protection for the title or initials that are used by its members, it may be said that the goodwill which attaches to membership is no longer wholly institutional in origin, and that the State, through the agency of the courts, has conferred a privilege upon the association, though it has acquired no control in return. But this is to misconstrue the terms 'legal' and 'institutional'; for what the State has done is not to create or confer a monopoly out of the plenitude of its power, but merely to restrain other persons from poaching upon a goodwill, which the association has won by its efforts, and through the free recognition by the public of the qualifications for which it stands. We can see little justification for state control, as opposed to state guidance, in professions where no legal monopoly has been granted, even though substantial legal privileges have been won and are receiving the protection of the courts. Nevertheless a few instances will be found where an unquestionably legal monopoly has been conferred upon the members of an association in an unregistered profession. It is not suggested that the distinction between legal and institutional privileges can ever be a hard and fast one. Where a monopoly has been granted, but can at any time be withdrawn, by a government department, it clearly has something of a legal, and also something of an institutional, character. Thus Parliament has laid it down that life assurance companies and other similar bodies must submit to a periodical valuation of their assets and liabilities, which must be carried out by a person having such qualifications as may be prescribed by the relevant department. Under the rules now in force this function has become the virtual monopoly of the Institute of Actuaries and the Faculty of Actuaries; but so far as the Acts were concerned it need not be so. On the other hand, where a privilege has been conferred by statute it is plainly to be regarded as legal; and under

¹ See *Isalpa*, March 1929, p. 218.

the Local Government and other Officers Superannuation Act a statutory monopoly has been conferred upon these same two associations. Any proposed scheme made under the Act must be submitted for report to a fellow of one or other of them.

Other instances could be quoted where the same procedure has been followed; though none is to be found outside the accountancy and actuarial professions. Nevertheless the position is distinctly anomalous. Generally speaking, where privileges of this nature have been granted, the State has intervened to control admission to the privileged inclosure. In other words, there has been no monopoly without registration—a principle which would appear both intelligible and just. If this principle is accepted, it will be appropriate at this point to follow up its implications and to ask: When and where should legal privileges be granted? or, to put precisely the same question in other words, what professions should be registered? We cannot answer this question without returning again to the function of the register. The register, though it may serve certain subsidiary purposes, is primarily an instrument for distinguishing those who are qualified to perform certain work from those who are not. But this is a distinction which in many spheres the public are able to draw for themselves; in others, inquiry will elicit the required information. It would seem therefore that the State is only justified in assuming the responsibility in those cases where the public are unable, or have not the opportunity, to distinguish for themselves, or where the consequences of consulting an unqualified man are very serious; that is to say, in those professions where the service is vital or fiduciary in a marked degree, and demands a prolonged intellectual training of a specialized kind. What professions fulfil these conditions? It has been remarked in an earlier section that these are precisely the conditions which are in fact fulfilled by the large majority of those professions which the State has hitherto been led to register. There are a few exceptions; architects and teachers would be ruled out, while accountants, actuaries, and persons administering ophthalmic treatment could advance a strong claim to be included.

As a general rule the argument does not extend to those who serve as assistants in registered professions, however vital or fiduciary the function, and even if the assistant is given charge of skilled and responsible work; for he is under the supervision of his principal who has himself been hall-marked by the State and may therefore be presumed to be competent to judge of the fitness of those whom he employs. There are, however, certain vocations,

subsidiary to one or other of the registered professions, which have received or may require special treatment, in view of the responsibility of the work and the impossibility of continuous supervision. Among the vocations subsidiary to the medical profession where such considerations may be urged are the nurses, the midwives, the masseurs, and the biophysical assistants. At present nurses and midwives are state registered, masseurs are organized autonomously in a chartered corporation, and biophysical assistants are organized under the auspices of the Society of Apothecaries. How does the argument affect these vocations? In the case of nurses and midwives the service rendered is vital, and though they may at times act under the supervision of a medical practitioner, they frequently have to take initiative and responsibility. This clearly indicates prohibition of practice by the unqualified, and therefore also state registration. Masseurs and biophysical assistants, on the other hand, perform a service which, though attended with danger, is less vital, while they are essentially the assistants of the doctor and should not be consulted save on his advice. State registration, therefore, is hardly called for;¹ and though the enterprise of the medical profession in organizing the biophysical assistants is to be commended, we should prefer to see them autonomous like the masseurs under a charter from the Privy Council.² It might be desirable if the Privy Council, in granting charters in such cases, were to insist that members should be forbidden to act except under the supervision of a registered medical practitioner. The solicitors' managing clerks are an analogous case. They have important duties to carry out, and constant supervision is not possible; but state registration would not be justifiable. At present they are associated in a voluntary body, the Solicitors' Managing Clerks Association; but it does not undertake testing for competence or other regulative functions. We should like to see the Association chartered by the Privy Council and holding examinations, perhaps in conjunction with the Law Society, for all who aspire to the position of managing clerks.

But if we propose few changes in the list of professions to which some degree of monopoly should be accorded, we find less reason for satisfaction with the degree and mechanism of monopoly as it

¹ Still less can it be justified in the case of the chiropodists who recently promoted a registration bill.

² It is of interest to note that one school of medical opinion, at all events, would be prepared to see the osteopaths organized on similar lines to the masseurs. 'If osteopaths were to make effective rules against improper advertisement and improper practice and raise their qualifying standards we should be more inclined to think of them in terms of co-operation.' *The Lancet*, 28th Feb. 1931.

has been allowed to grow up. Applying the principles enunciated above, we conclude that the monopoly should be co-extensive with those functions where the public interest demands protection against unqualified practice; that is to say, there should be prohibited acts and reserved appointments where there is danger to the public. But monopoly has its own dangers. It has not perhaps been wholly to the public disadvantage that doctors have had up to now to defend themselves against outside competition. Accordingly the policy of complete monopoly should not be lightly entered upon, and general prohibition should in most cases be avoided. This is not to say that professions should never be 'closed'. The prohibited acts and/or reserved appointments may be co-extensive with the professional field, as at the Bar and, virtually, in the merchant navy. Moreover, it may be desirable in a few instances, as perhaps in dentistry, to confer a complete monopoly through general prohibition. But where this is done it should be done unequivocally, and not indirectly through protection of title, as is the case in the veterinary profession to-day. Admittedly professional men attach a certain sentimental importance to protection of title; but history affords the amplest demonstration that it is a clumsy and ineffective method of discouraging practice by the unqualified. Indeed mere 'discouragement' in all its forms is to be condemned. Prohibition of practice by the unqualified only when undertaken for gain or reward is illogical, and, in the case of the midwives, has proved so ineffective that it has already been abandoned in favour of stricter methods. Prohibition on suing for fees is the most ineffective method of all, as is sufficiently apparent in the case of barristers and fellows of the Royal College of Physicians who are forbidden to sue for their fees although they are qualified. In addition, it is either in the nature of a fraud on the patient or client if it enables the quack to attend him without his being aware of the position, or a deliberate encouragement to the breaking of contracts if he understands the position and is prepared to take advantage of his legal rights.

It is necessary to add that the government must remain master in its own house; and though logic may demand the exclusion of teachers in elementary schools from the list of registered professions, nevertheless, so long as the government continues to contribute to their salaries,¹ it is entitled to make such requirements in respect of qualification as it thinks fit. The same reasoning would apply to doctors who accept work under the National Health Insurance scheme, were it not that there is already state registra-

¹ Or to those of sanitary inspectors and health visitors.

tion of medical men under the G.M.C., and those whom the G.M.C. has registered must be presumed to be qualified, whether to treat private patients or insured persons. However, the relations between the State on the one hand and the teachers and the panel doctors on the other raise a number of important issues which are reserved for discussion hereafter.

EDUCATION

The System

PROFESSIONAL monopoly, whether whole or partial and whether achieved with or without the intervention of the State, is based upon the possession of specialized techniques. The system under which these techniques are acquired and tested is therefore a matter of the first importance. The consideration of testing comes before that of training because, on the one hand, the authorities which test dictate the amount and kind of training, and, on the other hand, the system of testing is more complete than that of training.

Among the vocations studied there are not many exceptions to the rule that two tests are imposed, the first a test of general education and the second a test of professional competence. No test of the first kind is imposed upon entrants to the vocation of midwifery, but the recent Departmental Committee recommended that midwifery should come into line with other professions in this respect.¹ Where there is a first test, there is always a choice, usually a wide choice, of approved examinations.² The authority which imposes the second test may, indeed often does, offer a first test of its own, but in no case does any such authority fail to accept other examinations as equivalent to its own first test. Thus School Leaving and other similar Certificates are very widely accepted as evidence that a sufficient test in general education has been passed.

¹ *Report of the Departmental Committee on the Training and Employment of Midwives*, 1920, paragraphs 16 to 19.

² This was not always so. There are, however, no longer any serious grounds for the following complaint made a quarter of a century ago. 'It is a matter for regret that of recent years the professional bodies have shown themselves increasingly unwilling to recognize university examinations. It is to be hoped that in the future the correlation of standards by the various university examining bodies will render the preliminary examinations conducted by professional bodies unnecessary and relieve the head masters of a very serious burden.' (*Oxford and Cambridge Schools Examination Board: Summary report of the work of the Board during the thirty years 1874-1903, 1904.*)

The second test almost always falls into two parts, an intermediate and a final examination. There are cases, such as that of the R.C.V.S., where the professional examination is divided into more than two parts; but such variations from the usual scheme are unimportant. In the second test, unlike the first, there may be no choice of examinations. When this is so, the system may be described as 'uniportal', since there is but a single gate into the privileged inner enclosure. When there is a choice, and therefore more than one gate, the system may be called 'multiportal'.

In Table IV an attempt has been made to summarize the position to-day. Registered professions are shown separately from unregistered professions, and professions are classified as either uniportal, intermediate, or multiportal.¹ With regard to the registered professions, classification presents no difficulty because there is a clear-cut system for each profession. The Bar shows a very trifling departure from the uniportal system; Bar students, who hold a degree in law and who in the course of attaining that degree have passed an examination in Roman Law, are exempted from the Roman Law examination in the intermediate. Solicitors depart further from the uniportal system; those who hold a university degree in law are exempted from the whole of the intermediate. The unregistered professions present difficulties. There is no clear-cut system, and they are classified in the table by the system prevailing in the more prominent professional associations. This is not the only difficulty. The surveyors and auctioneers recognize the degree in estate management of the University of London as exempting *in toto* from their own examinations.² But this is the only important departure from the uniportal system in the case of these professions, and the fact that only a fraction of 1 per cent. of all entrants pass through this gate must be borne in mind where these professions are called multiportal. The Institution of Civil Engineers permits degrees in engineering to exempt from all but one small part of its own examinations; strictly speaking, therefore, the system is uniportal, but it would be misleading to class it as other than multiportal because most entrants pass in by virtue of degree supplemented by a single uniform paper. The situation in other engineering associations varies; those who have had considerable experience and some responsibility are generally admitted

¹ Architects are included among the unregistered because the recent Act has not come into full operation.

² The surveyors also recognize the degree in estate management of the University of Cambridge.

without examination, though they may have to show that they have been regularly trained and may have to write an essay or pass some such test. The civil engineers, however, occupy the leading place in the profession, and for the sake of simplicity are alone shown in the table.

There is no back door into a registered profession. Only those who have been examined can get on to the register.¹ But there is often a back door into the unregistered professions. We are not speaking of honorary membership; if a professional association makes a prominent politician an honorary member, the public is not deceived. But if it makes a man an ordinary member whose qualifications it has not tested by examination, there may be ground for complaint. Associations with no great prestige freely admit to membership those who have not been examined, and no great harm is done. The matter becomes of importance, however, in the case of the leading associations. The Institute of Chartered Accountants has no power to dispense with examinations, but this is an unusual case. In most instances in which the examinations necessary for each grade are set out under the constitution, there is a clause giving to the governing body certain powers of dispensing with examinations. The charter of the Institute of Actuaries permits 'examinations being exceptionally dispensed with by the Council if it thinks fit'.² The Chartered Surveyors' Institution has obtained power of dispensation in the case of fellows. In the charter of the Chartered Institute of Secretaries it is laid down that admission shall be by examination subject to the right to provide in the by-laws for dispensation in 'exceptional cases'.³ Under the by-laws dispensation is granted to any person 'of eminence in the Secretarial Profession' who is in actual employment as secretary to a company having an issued capital of not less than half a million pounds or a gross revenue of not less than £25,000 a year.⁴ It is not easy to discover how frequently these dispensing powers are employed. It would seem that in associations of standing they are sparingly used, and there is no evidence that those admitted without examination have not attained a reasonable standard of competency.⁵

¹ Under the Medical Act of 1858 holders of 'Lambeth' medical degrees are not eligible for registration.

² *Charter of the Institute of Actuaries*, 1884, clauses 22 and 25.

³ *Charter of the Chartered Institute of Secretaries*, 1902, clause 12.

⁴ By-law 21 of the Chartered Institute of Secretaries.

⁵ The following appears, for instance, to be the approximate position in the case of the Institute of Actuaries. Seven fellows have been admitted unexamined. Of these three were admitted before the granting of the charter, two are fellows of the Faculty, and two are members of an American actuarial

There was formerly no distinction between theoretical and practical training. With the rise of the modern examination system a line can be drawn between training in those subjects in which an examination is held, and training for the purpose of gaining special practical experience. The former may be called theoretical and the latter practical training. The theoretical training in some subjects, chemistry for instance, includes practical or laboratory work; but practical work of this kind is not included under practical training in the sense in which the latter term is used here. Table V attempts to show the position to-day in relation to the provision of theoretical training. It takes the form of classifying professions according to the arrangements which exist for training in institutions since this form of training is now either given in institutions or not at all. The registered and unregistered professions are again shown separately. Architects are omitted because it is not yet known what regulations will be made under the new Act. It will be seen that compulsory institutional training is the rule among the registered professions. The Bar is a notable exception. When considering the unregistered professions, it must be recollected that we are in fact attempting to classify the leading professional associations. In the case of the accountants the position in three leading associations has been shown in order to draw attention to remarkable differences which will be discussed later.

It may be observed that, whenever universities conduct professional examinations, they require students to attend theoretical instruction, except in the case of the external degrees of the University of London. It follows that, with this exception, institutional training is implied whenever admission to a register or to a professional association is by way of a degree. Furthermore, since universities set their faces against training those whom they do not examine, it follows that when institutional training is demanded, and either a degree is not accepted or universities do not conduct professional examinations, institutional training must be found outside universities. Two types of non-university institution providing such training exist. There are colleges and schools devoted to particular professions such as the Royal Veterinary College, the College of Estate Management, and the Law School

association. Forty-nine associates have been admitted unexamined, eleven before or within three years of the granting of the charter, and thirty-eight since. Of these thirty-eight, thirty-six are fellows of the Faculty and only two appear to have no hall-mark. It has been stated that in 1922 less than 1 per cent. of the fellows of the Royal Institute of British Architects had been admitted under the dispensation clause. (*R.I.B.A. Journal*, 3rd ser., vol. xxx (1922-3), p. 362.) No dispensation is permitted for the associateship of the R.I.B.A.

TABLE IV
PROFESSIONAL EDUCATION

The Examination System

<i>Type of Profession</i>	<i>Uniportal</i>	<i>Intermediate</i>	<i>Multiportal</i>
Registered	Pharmacists Veterinary Surgeons Civil Service Patent Agents Merchant Navy Mine Managers Nurses Midwives	Bar Solicitors	Doctors Dentists Certificated Teachers Registered Teachers
Unregistered	Accountants Actuaries	Land Agents Secretaries	Civil Engineers Chemists Physicists Surveyors Auctioneers Architects

TABLE V
PROFESSIONAL EDUCATION

Theoretical Training

<i>Type of Profession</i>	<i>Attendance at approved place of instruction obligatory</i>	<i>Attendance not obligatory</i>	
		<i>Facilities for institutional instruction easily available</i>	<i>Facilities for institutional instruction scarce or absent</i>
Registered	Doctors Dentists Veterinary Surgeons Nurses Midwives Pharmacists Solicitors Certificated Teachers Registered Teachers ¹	Bar	Patent Agents Merchant Navy Mine Management
Unregistered	Chemists Physicists Scottish Chartered Accountants	Civil Engineers Land Agents Surveyors Auctioneers	English Chartered Accountants Incorporated Accountants Actuaries

¹ Except in special cases, e.g. University teachers.

of the Law Society. There are also technical and commercial schools giving instruction in many subjects. When there is no institutional training available, the student may resort to coaching organizations, many of which provide correspondence courses for those desirous of passing professional examinations.

It is still more difficult to give a picture which represents the position in regard to practical training. Where practical training is enforced, it may take various shapes. It may be given within institutions. Doctors and dentists, for example, obtain their obligatory practical experience within medical and dental schools. It may also be given outside institutions but under corporate authority, by which is meant that the training is, to some extent at least, supervised or controlled by some corporate body. The corporate body may be a professional association, as in the case of the Pharmaceutical Society, which requires a period of practical training in a retail shop under articles of pupilage approved by the Society. It may be a university or a college, as in the case of teachers who gain their practical experience in schools under the supervision of the institution in which they are studying for their certificate. Finally, practical training may be required, but no corporate supervision may be exercised. Thus a solicitor must have been articled for a period of years, but the Law Society does not approve the articles or undertake any responsibility for supervising the training. Table VI attempts to give a classification of practical training under these heads. This classification is made difficult because different methods of training may be permitted in a registered profession or by a professional association. The Board of Trade, for example, allows training in a nautical school to count for part of the sea training demanded. This difficulty is much more prominent in the case of the unregistered professions. Admission to the R.I.B.A. may be by way of an architectural school, in which case practical training in an office is enforced under the supervision of the school; but, in the case of those who do not enter by way of a school, practical training is not enforced. Therefore one profession may be entered in more than one column in the table. The position in three different associations of accountants is shown as a further illustration of the complexity of the situation.

TABLE VI
PROFESSIONAL EDUCATION
Practical Training

Profession	Practical Training not enforced	Practical Training enforced			
		Within institutions	Outside institutions		Not under corporate supervision
			Under corporate supervision of institutions	of professional associations	
Bar	X				
Solicitors					X
Patent Agents					X
Doctors		X			
Dentists		X			
Nurses		X			
Midwives		X			
Veterinary Surgeons		X			
Pharmacists		X		X	
Merchant Navy					X
Mine Management					X
Civil Engineers					X
Chemists	X				
Physicists	X				
Architects	X		X		
Surveyors	X				
Land Agents					X
Auctioneers					X
Certificated Teachers			X		
Actuaries	X				
Scottish Chartered Accountants				X	
Incorporated Accountants					X ¹
English Chartered Accountants					X

Supervision is exercised by the professional association but only to the extent that articles must be in a prescribed form.

Efficiency

With this sketch of the existing educational system in mind, we may ask whether it leads to efficiency, since it is essential in the interests of the public that those, who hold themselves out as prepared to render skilled and specialized services, should be competent. Examinations are the recognized means of testing the possession of a sufficient amount of theoretical knowledge. But among the unregistered professions, with one or two exceptions, membership of a professional association does not necessarily imply that an examination has been passed. The leading professional associations, however, only admit unexamined persons to membership by special dispensation, and this appears to be given infrequently and with discretion; though it might be urged that the back door should be closed, it has to be remembered that if a man, who does not happen to have been examined, becomes well known as an efficient practitioner and is not permitted to enter the association, the public will come to think that there is little difference between members and non-members. There is little danger of the abuse of the power of dispensation. Members, who have been examined, regard privileged entrants with jealousy.¹ Moreover, the prestige, at which all associations aim, can only be built upon the proved competence of their members; and the method of certifying competence by examination is so widely understood and appreciated that it is dangerous to neglect it.

It is not enough in the interests of efficiency that regard should be had only to technical competence. A professional man should be an educated man in the broad sense of the term, if he is to play his proper part in the application of his technique to the needs of society. In the interests of general education it is undesirable that specialist study should begin too early. The authorities, which determine the shape that professional education assumes, rarely encourage early specialization; not infrequently they discourage it. A pamphlet, which deals with education for the profession of chemistry, and is issued in a series drawn up in consultation with the authorities regulating each profession, says that 'the first essential towards equipping a boy for a scientific career is a *sound general education*. He should remain at school until at least sixteen or seventeen years. . . . The chemist must have not only technical knowledge but initiative, resource, and self-reliance. To the

¹ For evidence that those who enter in a usual way feel it to be a grievance that unexamined persons should be admitted, see the Surveyors' Institution: *Transactions*, vol. lii (1919-20), p. 63.

development of these a liberal education best contributes.¹ It is true that some professions make certain subjects obligatory in the test of general education. Latin is required from barristers and solicitors, and similar instances could be given.² But it would be difficult to found upon them an accusation of enforced early specialization.³

There is one case, however, where early specialization is encouraged, if it is not made obligatory for all practical purposes. Medical education has long consisted of three stages, elementary science, physiology and anatomy, and clinical hospital study. Owing to the growing congestion in the last two stages, the G.M.C. has introduced a pre-registration examination in chemistry and physics. The minimum age for registration as a medical student is seventeen. Preparation for the pre-registration examination may take two years, and therefore general education may stop at fifteen. By this ingenious move the length of the medical course is kept at a minimum of five years; but this is done by relegating part of the medical curriculum to the secondary school. A member of the profession, who has every right to express an opinion, comments as follows:

'One result is that the general education of the medical student stops at a very early age. . . . We are proud to think that we belong to a learned profession and we have sanctioned a system which tends to put a premium on illiteracy. . . . It is a serious matter if the medical profession is to lose recruits who have had the great advantage of a general and unspecialized education.'⁴

When the student does begin his technical education, he must thenceforth concentrate upon it. But it is most desirable that the indispensable technical training should not be conducted in too

¹ *Chemistry and Physics*, Choice of Career Series, No. 1, p. 2.

² Thus the preliminary examination of the Chartered Institute of Secretaries includes stenography. But the Institute accepts other examinations in lieu of its own first test and these are not specialized.

³ It is not intended to imply that there is little or no undesirable early specialization. That is very far from being the case. But it is not as a rule enforced by the regulating authorities, some of which even do something to discourage it. They ought perhaps to do more in the way of discouragement. But this is not easy. Parents are insistent that their children should embark upon a course, as soon as possible, which leads to employment. If the regulating authorities demanded that more time should be spent upon general education before entering upon professional training, they would be accused of exclusiveness. Those who control the examinations, which are accepted as tests of general education, occupy the strongest position. They could and should demand better performance before granting their certificates. No one can be said to possess sufficient general education who cannot write English grammatically and lucidly. Not one-half, perhaps not a quarter, perhaps even less, of those who enter upon courses of training for the professions possess this accomplishment.

⁴ *British Medical Journal* (1930), vol. ii, p. 341, from an article by H. R. Dean.

narrow an atmosphere. The association of students studying different techniques, medicine, law, dentistry, engineering, chemistry, and so on, such as occurs in a modern university, may do much to widen understanding and to create diversity of interests. Moreover, since research is a prominent feature of university activities, the atmosphere is less likely to be heavy with instruction than in purely teaching institutions. On this account there is much to be said for the training of entrants to the professions in universities, and much to be said against isolated professional schools. The absence of any facilities for institutional training is still more to be condemned.

It does not fall to us to pursue the problem of the promotion of general education. It is enough to point to impediments, such as early specialization and training in isolation, which exist and might be removed. Passing to the consideration of specialized education, we may review the existing arrangements for training in preparation for the professional examinations and the nature of the examinations themselves. Taking the latter point first, it is essential that, whatever the content of the course may be, standards should be high. There is no evidence that standards in general are anything but satisfactory. The various examination boards appear to do their work with impartiality and thoroughness. Such complaints as are made are usually to the effect that standards are too high; unsuccessful candidates indeed are only too likely to look for the cause of their failure elsewhere than in themselves. While there is apparently no substance in these complaints, it does not follow that the system is incapable of improvement. When universities examine, external examiners are called in, and there is much to be said for this check against improper standards and possible abuses. From the nature of the case it is difficult, if not impossible, for professional associations to employ external examiners because they aim at, if they do not achieve, a membership which includes all those who are competent to judge the equipment of candidates in the special technique of the association in question.¹ When we deal later with the reorganization of the arrangements for the entry into the professions, we shall include a suggestion to meet this difficulty. Attention may also be drawn to the arrangement made by the G.M.C. whereby credit may be given for 'duly attested records of the work done by the candidate throughout his course

¹ That some professional associations are alive to the importance of this matter may be gauged from the following provision: 'The Examination Committee shall be the Examiners, and shall conduct the Examinations, assisted by such qualified persons, whether members of the Institution or not, as may be appointed for the purpose by the Council.' (Chartered Institute of Secretaries, By-Law 16.)

of study'.¹ This innovation is capable of extension and might do something to counteract the well-known disadvantages and difficulties of the examination system.

If all entrants to a profession have to pass the same examination, they will all follow similar courses, and there is a danger that professional training will exhibit a featureless uniformity. Under these circumstances training-schools cannot afford to experiment or to specialize, because they would do so at the expense of their students, who would be less well prepared than others to give a good account of themselves at the standardized examination. But it is not necessary that there should be a single qualifying examination. Under the multiportal system there are many examinations; schools can specialize within certain limits and can conduct educational experiments.² The medical schools, which work under the G.M.C., have developed characteristics of their own, and a friendly rivalry has developed between them to the great advantage of medical education. There is no reason why the multiportal system should not be made universal, and we shall presently show how this might be achieved.

With the advancement of knowledge and the raising of standards, the content of the courses of theoretical training has greatly increased. This factor, more than any other, has led to the breakdown of the apprenticeship system under which both theoretical and practical training was supposed to be given. Apprenticeship is now concerned with practical training only. To fill the gap, institutional theoretical training has come in, and we have shown how far provision is made for such training. Provision is not complete and there is no defence for the failure to provide institutional training for all professions. The student, for whom no such facilities are provided, has perforce to rely upon text-books and cramming organizations. In addition he lacks those opportunities for widening his interests which come from intercourse with fellow students. Who should fill the gaps which exist?

It is not for the professional associations to found and conduct schools. They do not usually possess the necessary financial resources, and they are not well acquainted as a rule with the problem of organizing educational institutions. Moreover, we have argued that there are objections in principle to single-purpose schools. Therefore, while the energy and enthusiasm which has gone into the founding of schools of law, architecture, and estate

¹ *British Medical Journal* (1929), vol. ii, p. 387.

² Thus at Oxford medical students are required to take an honours degree course as well as to take the qualifying degree.

management by the professions is deserving of commendation, the policy involved is mistaken. Certain professional associations, including some of those which have founded schools of their own, have pressed upon universities and technical colleges the need for courses to meet the requirements of their own students; they have even founded lectureships and endowed scholarships. Others have regarded the absence of facilities with equanimity. The English accountants and the actuaries have been markedly apathetic in this matter. It can be made a complaint against them that they have not shown more interest and activity. But before we can form an opinion as to whether the professional associations should knock at the door of the university or of the technical college, we must discuss the content of the required courses of theoretical training.

It may be laid down as a guiding principle that, when the content of a course of professional training is under review, the aim is professional efficiency. It has been emphasized that general education is an indispensable element in efficiency. But in devising a scheme of professional education, no more can be done than to avoid early specialization and to see that, when the time comes for specialization, it is not undertaken in a narrow atmosphere. If a course of professional training is designed with general education and professional efficiency both in view, there is a confusion of aim which is likely to result neither in efficiency nor in culture. On the other hand, there is no reason why such specialization, as a course of professional training involves, should be incompatible with the gaining by the student of all that general education sets out to give. Professional education can provide a good general education if it is broadly based, but if a course of professional education is to be broadly based, it must be shown that the broad basis is demanded by considerations of efficiency.

Efficiency sometimes demands little more than routine intellectual knowledge. This is true, for instance, of midwifery, nursing, the merchant navy, and mine management. The amount of routine knowledge required may be very considerable in these cases, but it need not be founded upon fundamental study in any field of knowledge. On the other hand, doctors, dentists, and others must study the sciences upon which their techniques rest. They cannot otherwise be efficient. Dentists, as we have said, do and should study, not only methods of filling teeth and making dentures, but also the anatomy, physiology, and pathology of teeth. Between these extremes there are many professions, such as accountancy, the position of which is difficult to determine. It

may help to define their position if we now ask how universities stand in relation to the forms of training mentioned.

'I should describe a university', says Professor Alexander, 'as an association or corporation of scholars and teachers engaged in acquiring, communicating and advancing knowledge, pursuing in a liberal spirit the various sciences which are a preparation for the professions or higher occupations of life. The omission of any part of this description would convey a false impression of what a university is. It needs teachers as well as scholars. It does not exist only for acquiring and communicating the higher branches of knowledge, but for extending them as well; and it does not only pursue the sciences for their own sake, but, so far as the larger part of its members are concerned, pursues them in preparation for the professions. I had almost said that the purpose of a university was to prepare for the professions, and I should be ready to defend this, provided that the qualifying words "in a liberal spirit", are not merely not omitted but emphasized. Without such emphasis, it is safer to say not that its purpose or object is the professions, which may appear too utilitarian, but that it does in fact prepare for the professions by pursuing the sciences on which those professions are founded.'¹

Professor Alexander goes on to say that

'the word science is here used, not in its unfortunate restriction to the natural and mathematical sciences, but in its comprehensiveness in which it includes the Arts. Science means, first the study of the rational principles underlying each subject or art, and, second, establishing relations between one subject and another, generalizing or distinguishing, which process is the beginning of philosophy.'²

He draws a distinction between the

'systematic and deliberate effort to understand by principles, to discover the reasons of facts, instead of merely acquiring familiarity with a subject of knowledge, or merely acquiring technical skill in the handling of a certain material. What makes study academic is its liberal spirit which can be cultivated as well, though perhaps with greater difficulty in the attainment, in natural science and technology as in the subjects such as literature, and in particular ancient literature, or the moral sciences which used to monopolize the name of liberal subjects. Liberality is a spirit of pursuit, not a choice of subject.'³

Let us now return to our three classes of vocation. The preparation for those vocations, which for the purposes of efficiency merely demand the acquisition of routine knowledge or of technical skill in the handling of a certain material, finds no place in a university. But those preparing for them should train in institutions,

¹ *Political Quarterly*, vol. ii (1931), p. 337.

² *Ibid.*, p. 339.

³ *Ibid.*, p. 341.

and it is better that these institutions should be general commercial and technical colleges rather than single-purpose schools. It is most desirable that the entrance to these vocations should be multiportal, and there are no reasons why it should not be so. But there are forces working against the introduction of the multiportal system. To those who wish to raise standards by subjecting a vocation to registration, the single standardized examination commends itself as easy to impose. To the professional association, seeking to control an unregistered profession, it seems as though the recognition of certificates, granted by teaching institutions, as admitting to membership, implies the surrender of a legitimate ambition. These forces have produced the single standardized examination for nurses, whereas it would have been possible, and in the long run preferable, to have given licensing powers to the hospital schools under the supervision of the General Nursing Council. They also held up for many years the introduction of the multiportal system into the R.I.B.A.

There is no doubt that students of medicine, law, chemistry, physics, and of certain other professions must study sciences which it is the proper function of a university to pursue and that therefore they do or should find their proper place in a university. That students of law, veterinary surgery, actuarial science, and patent agency do not come as a general rule to universities, is because these professions are not multiportal, and because degrees carry no licence to practise. No reform of the scheme of professional education is more to be desired than the transformation in these cases of the uniportal into a multiportal system. To the general reasons which have been given for the education in universities of entrants into the professions may be added another consideration which is relevant in these cases. So far as serious criticism can be made of the content of courses of training for the higher professions, it relates to cases where the universities have no status. It is a reproach to the present system that neither barristers nor solicitors are required to study jurisprudence or comparative law and that the legal education of patent agents is confined to the study of patent and trade-mark law. It is often alleged that the training of veterinary surgeons is not adequate. There is reason to suppose that these reproaches would be removed if the universities were given control over the courses, since similar complaints are not made where universities do exercise control.

There remain some difficult intermediate cases. The education of surveyors, auctioneers, land agents, secretaries, and accountants at present mostly takes the shape of learning an intellectual routine.

But basic studies play some part. The Scottish Chartered Accountants made economics compulsory some time ago. Later the Incorporated Accountants followed suit, and more recently still the English Chartered Accountants introduced it as an optional subject. But it cannot be said that any of the existing courses, leading to a professional qualification in any of these professions, is based upon the study of a science. To answer the question whether, from the point of view of efficiency, preparation for these professions does require basic studies, would involve more discussion than there is place for here. But it may be suggested that, if accountants are to play an effective part in the field of business organization that is opening to them, they will require more than an education limited to intellectual routine, and there seems to be a strong case for holding that the education of accountants should be founded upon social and economic studies. It is perhaps somewhat less clear that the same can be said of secretaries, surveyors, land agents, and auctioneers, though a similar case might be made out. But until such a case is made out there is no place in a university for those training for these professions. However, if reforms are brought about, the method should not be by providing courses in accountancy and surveying at universities, but by requiring or encouraging those preparing for these professions to study economics, mathematics, or some other science already pursued in universities.

In the case of those professions for which training is or may be given in universities, there arises a problem relating to technical accomplishments. We are not referring to the acquisition of practical experience which will be discussed in what follows. The reference is to those routine technical accomplishments, such as the construction of dentures, without which no one is fit to receive a certificate of professional proficiency. If acquirements of this kind are all that a man needs, he should not come to a university. But if he comes to a university to pursue fundamental studies, should facilities be given to him to perfect himself in these acquirements also? It would seem that difficulties are often felt in regard to the technical accomplishments, which are necessary for the newer professions, and it is thought that there would be something derogatory to a university if provision for their acquisition was made within its walls. But prolonged experience has not shown that there is anything unfitting in the teaching of *materia medica* and other necessary elements of medical technique within universities. If that is so, there is no objection to dental students learning how to make dentures, or to students of accountancy learning book-

keeping in universities, provided that they come there in the first place to undertake a course of scientific study. The acquisition of these technical accomplishments is one thing if it is not based on scientific study, and quite another thing if it follows such study and is integrated with it.

There remains the question of practical training. Practical training is not necessary for chemists, physicists, and actuaries. They are, so to say, laboratory men, who transfer their laboratories to the institutions which they serve. But this form of training is necessary in every other case. It is a grave defect in the system of training for the Bar that practical training is not obligatory. In consequence there is no guarantee that a man with the hall-mark is in fact qualified. No solicitor likes to employ a barrister whose sole recommendation is that he has been called. In all probability no single factor contributes so much to the concentration of work at the Bar upon the small proportion of the qualified, who alone have been able to exhibit their competence.

Where should practical training be given? It has been found possible to institutionalize practical training for the professions in the medical group; no difficulty has been discovered in arranging that it should be institutionalized under universities. The advantages of institutionalization are manifest. It is possible to arrange a more complete integration of the theoretical training with the practical training than is otherwise the case, and to ensure that the latter is efficient. Institutionalization should therefore be extended wherever possible. There is much to be said for the revival of compulsory 'moots' at the Bar and for the replacement of at least half the sea time required of entrants to the merchant navy by training in training-ships or nautical colleges. If training in an office is unavoidable, it should be under the supervision of the authority which is responsible for the theoretical training. At present there is a gradation from the position where nothing is demanded beyond evidence of service for a specified period under articles or as a salaried assistant, to the position in which the relevant authority not only prescribes a form of articles but also reserves the right to refuse to register articles, if there is any reason to be dissatisfied with the proposed arrangement. The former is found among solicitors and the English Chartered Accountants. A solicitor's articulated clerk must be engaged 'in the proper practice, business, and employment of a solicitor'.¹ That is all. Condemnation can hardly be too strong for the numerous cases in which the relevant authority has failed to assume any responsibility for seeing

¹ 6 & 7 Vic., c. 73, s. 12.

that a period spent in an office is likely to achieve the effect desired—for attempting, in other words, to ensure that the master will teach and that the pupil will learn. The policy of the Chartered Institute of Secretaries in laying down in some detail what are to be regarded as the ideal terms of the contract between master and pupil is in welcome contrast with the negative attitude taken up by the English Chartered Accountants.¹ ‘Articles of clerkship shall, as far as practicable, be in the form from time to time prescribed by the Council, subject to such variations as the Council may permit in individual cases.’²

‘The normal terms of articles should be a premium to the principal, and the pupil should receive some remuneration during the period of articles [presumably from the company]. A systematic course of training should be provided by the principal, which, for a public company office, should be: (a) the first six months in the general office, doing all the work of an office junior, including filing; (b) eighteen months in transfer department; (c) one year in accounting department; one year directly assisting the Secretary, preparing agendas and minutes, and, if possible, attending Board Meetings.’³

A further improvement is found in the system in force among the Scottish Chartered Accountants, who not only prescribe the form of the articles but also reserve the right to refuse to register them if the proposed arrangements are not satisfactory. Allied to this matter is the payment of premiums by pupils. Premiums are a hardship to the poor man as will be emphasized later. It may also be doubted whether the premium system tends towards efficiency. If the pupil pays the master, he is likely to think that he can work or not as he pleases, and the master probably takes the view that he had better not demand too much work from profitable pupils who might go elsewhere. If the relevant authorities were to set their faces against the premium system it would gradually die out. The Glasgow Chartered Accountants have indeed already abolished it.

Exclusiveness

If the system of entry into the professions is exclusive, in the sense that it shuts out men on grounds other than failure to attain proper standards of competence, it is unjust. Exclusiveness in this

¹ The result is that the practical training is often far from satisfactory. It has been alleged of the English Chartered Accountants that ‘the practical work of the average articulated clerk is mainly devoted to routine checking which is of little educational value’. (*The Accountant*, vol. lxxvi (1927), p. 31.)

² Chartered Institute of Secretaries: *Year Book*, 1931-2, p. 57.

³ *Ibid.*

sense also leads indirectly to inefficiency, inasmuch as some of those well qualified to make themselves competent are unable to do so. It should be remembered, however, that exclusiveness in another sense is the object of the system, since its primary purpose is the shutting out of the incompetent. Exclusiveness in the first sense may arise from the action of professional men themselves or from the structure of society. In what follows the former alone will occupy our attention.

The only case of limitation of the number of entrants met with in any of the vocations examined was that of the stockbrokers. This instance can be defended on the ground that, without such limitation, a private market could not be preserved, and, without a private market, discipline could not be enforced. The limitation of the number of pupils, generally two, to a qualified practitioner, found among solicitors, accountants, and others, does not involve a limitation of the number of entrants. It is a salutary rule, since it is not to be supposed that more than two pupils can be properly supervised at one time. There is no evidence of exclusion on account of lack of social qualifications. It is true, that before any one is accepted as a Bar student, he must obtain a letter from a responsible person stating that he is 'a gentleman of respectability'. But no one who has eaten his dinners can be of opinion that this requirement is narrowly interpreted. Reference has already been made to the allegation that examination standards are sometimes made too high in order to keep down the number of entrants, and we have said that we do believe that this is true.¹ Nor is there any evidence that remote subjects, such as few candidates can acquaint themselves with, are made compulsory of set purpose.

The length of the qualifying period is a matter of great importance to the student since he must be maintained for that time. The minimum length of time is determined in different ways. At the Bar, where there is no compulsory training, either theoretical or practical, it is fixed by a rule requiring that twelve terms, extending over nearly three years, must be kept before call. Since the student is not obliged to spend this time in attempting to make himself efficient, nothing is gained by this period of enforced waiting, and so long as practical training remains optional, there

¹ *The Accountant*, vol. lxxiv (1926), p. 431, contains an address by the President of the Institute of Chartered Accountants in which this matter is referred to. He said, 'there seems to be an idea that the Examination Committee . . . try to keep down the numbers of those who are successful in the examinations in order to keep down the number of members of the Institute. Gentlemen, that is not so'.

is no reason why those who wish to do so should not be eligible to be called as soon as they have passed the examinations. The rule works so as to exclude those who cannot afford to wait. In some cases the length of time is determined by the length of the theoretical training which must be undergone before it is permissible to sit for the final examination. That is so, for example, in chemistry and physics; and there is no evidence that the length of the theoretical training is excessive in these cases or elsewhere. But in most cases it is the minimum length of the practical training which is the effective limit, that is to say, where both theoretical and practical training are required, it is the length of the latter rather than the former which determines the time during which the student must be maintained.

Five years' pupilage is normally required of solicitors, accountants, and patent agents. A remission of some two years is often granted to graduates. Maintenance during so long a period is costly, and it is a matter for consideration whether the required period is unnecessarily lengthy. The fact that remission is allowed to graduates is some evidence that it is so. It is not apparent why a graduate requires less practical training than a non-graduate. If a graduate can become efficient after three years, three years are enough for all. It is sometimes urged, and apparently with truth, that pupils are not efficient even after five years. If this is so, it is a criticism of the existing system of pupilage. If the pupilage system was organized, as suggested above, so as to ensure that it was efficient, it ought to be possible substantially to reduce the length of the training period.

When we turn to the direct expenses which fall upon students, we find that examination fees are everywhere moderate. The same cannot always be said of the charges for practical training. It is noteworthy that when practical training has been institutionalized, there is no complaint to be made. A medical student need only find about £85 a year for examination fees, books, equipment, and charges of all kinds, while for a dental student the sum is about £60.¹ But when practical training takes the form of pupilage, it is another story. Premiums vary greatly; it is difficult to discover the range and impossible to discover the average. High premiums are sometimes paid, not so much for the instruction given, as to

¹ *The British Medical Journal* (1930, vol. ii, p. 347) puts the cost of a five-year course of medical education at £1,500, of which two-thirds to three-quarters are for maintenance. Taking the costs, other than for maintenance, as £425, we arrive at £85 a year. *The British Dental Journal* (1930, p. 1015) puts £250 as the sum required for a four-year course in dentistry otherwise than for maintenance.

pave the way for obtaining a remunerative partnership; on the other hand, premiums are sometimes returned by way of salary, while more rarely still, pupils are taken free.¹ Premiums are understood to range between 200 and 500 guineas among solicitors and accountants, between 100 and 500 among auctioneers (the normal amount being 300), and between 100 and 300 among surveyors. At the Bar the sum is 100 guineas per annum, with the addition of the clerk's fee of 5 or 10 per cent.; and pupilage lasts one or two years. Taking what can only be a very rough average, it appears that the annual cost of this form of practical training alone is about the same as the sum which a medical student has to find annually for theoretical and practical training, books, examination fees, and all other charges. Moreover, the medical student gets what the pupil lacks—continuous supervision and access to costly facilities. The charges made for practical training by way of pupilage are therefore altogether out of proportion to other charges for professional education. Pupilage tends unnecessarily to exclude those whose means are restricted both because it lasts longer and costs more per annum than it need. The blame must be laid mainly upon the professional associations. They could reform the system of practical training, and if the system was more efficient, the training could occupy less time. They could fix the amount of the premium as is done by the Chartered Accountants in Edinburgh and Aberdeen; or, better still, they could abolish it as the Glasgow Chartered Accountants have done. While we do not think that it could be maintained against the professions that they have deliberately aimed at keeping down numbers through the pupilage system, we are of opinion that they have allowed a costly and inefficient system to continue which incidentally affords them some protection by restricting the number of entrants.

The entrance fees and annual membership subscriptions, charged by professional associations, are not unreasonable with a few exceptions. The exceptions are to be found where, in place of an annual subscription, a life membership fee is charged at the time of admission. The Inns of Court and the Society of Accountants in Edinburgh adopt this policy. The Inner Temple requires £112 11s. and Lincoln's Inn £102 3s. when a student is

¹ An authoritative pamphlet on the auctioneering profession, after giving figures for premiums, goes on to say that 'in very few instances is any portion of this payable by way of salary during training'. (*Surveying, Land and Estate Agency and Auctioneering*, Choice of Career Series, No. 4 (1929), p. 9.) It is sometimes suggested, by way of apology for the system, that the return of fees is not very uncommon. It is of course impossible to ascertain the exact facts, but it seems probable that the position, as officially described among the auctioneers, holds good of most professions where the premium system prevails.

called to the Bar.¹ To demand these large sums from those who have yet to earn and nothing from those who are established and earning is unnecessary and unjust. These associations exist largely for the benefit of established practitioners who should find most of the money required for upkeep by annual contributions; entrants should only be called upon to pay the cost of examination and enrolment as members. The same principle holds good for the registered professions, and we find that it has generally been applied by Parliament; the statutes setting up registers commonly contain provisions for a registration fee and an annual retention fee.² But doctors pay £5 on registration and no annual fee—an arrangement which means that the whole of the expenses of the G.M.C. are met by a levy upon entrants.

Though we are concerned here primarily with exclusiveness resulting from the policy of the professions, it is not inappropriate to refer at this point to a tax which the State levies upon those entering the legal profession. A stamp duty of £25 is payable by those accepted as Bar students and another £50 on being called to the bar. Solicitors pay £80 when they take out articles and £25 when they qualify. When originally imposed upon solicitors these taxes were 'calculated to render the profession more respectable and eventually to cause members of it to rank higher in the estimation of society'.³ They were therefore intended to render the path of the poor man hard, and they do so still. It is an anomaly that the State should continue to employ its resources to render a profession exclusive when the policy of opening careers to talent has come to be that of all parties.

Thus far we have been speaking of normal entrants, that is, of those who begin to prepare for entrance after leaving school. But there are sometimes persons of adult age who wish to enter a vocation. In most cases it is not reasonable that requirements should be relaxed on their behalf. In some cases, however, it is reasonable to do so, and we have seen that the Institute of Chemistry has made special arrangements in regard to those who can only attend evening classes. But the most important case is that of the man who is engaged in a salaried position in the office of a professional man and has gained considerable practical experience. There are grounds for remitting in his case part at least of the requirements in respect of practical training. A solicitor's clerk of ten years' standing—the 'ten-year man'—is exempted from two out of the

¹ For particulars see Appendix III.

² Ibid.

³ Quoted from *The Gentleman's Magazine*, vol. lxxvi, p. 153 (Feb. 1836), by E. B. V. Christian, *A Short History of Solicitors* (1896), p. 134.

five years' articles and from the obligation to attend a school of law. He is not entitled to exemption from the preliminary, though the committee of judges has general power to exempt from that examination in special circumstances. Whether this power is used to assist the ten-year man who has not had the advantages of secondary education we do not know; but it is believed that the number of solicitors who have qualified under the ten-year rule is small. On the other hand, it is not unknown for a promising young clerk to be given his articles by his employer for a nominal sum. On the whole we are of opinion that the case of men in this position is not adequately met by the existing arrangement; up to a point, therefore, unnecessary exclusiveness prevails here.

We have found that the cost of entering certain professions is higher than it need be in the interests of efficiency and that the professional associations are not free from blame for the position. But if all the reforms suggested were made, professional training would remain expensive, because it is necessarily lengthy; and this implies that the student must be maintained for a considerable period before he begins to earn. An expensive training implies exclusiveness, but the exclusiveness here is due to the social system and is not of a kind that can be remedied by the professions themselves.

REFORM OF THE SYSTEM OF ENTRY INTO THE PROFESSIONS

THE present educational system, of which we have sketched both the structure and the functioning, is in need of reform in certain directions; it is also in need of co-ordination and of everyday supervision in order that it may be kept efficient and in harmony with changing conditions. To what agencies should this supervision be entrusted and in what directions should their policy be guided? We take the registered professions first, and it will be found that, in answering the first of the two questions just asked, we shall have replied to the question posed at the end of the section on the registration authority. Having dealt with the registered professions, we go on to inquire how far the conclusions drawn are applicable to the unregistered professions.

In the registered professions the principle agencies must always be the registration authorities. It is not desirable that these

authorities should be entirely independent of state control; registration implies, or should always imply, the granting of privileges to the registered, and the State ought not wholly to divest itself of the duty of ensuring that the registered, to whom it has given these privileges, are efficient. Registration authorities are brought into being by statute and can be controlled up to a point by subsequent legislation. Legislation is necessary in order to set up registration authorities, but the weakness of attempting to control them subsequently by amendment of the law and in no other way is shown by the case of the solicitors. The result is that this profession is tied down by statutory provisions and that the system is lacking in elasticity and capacity for natural growth. Thus even such a detail as the period of articles, or of exemption from articles in the case of university graduates, is contained in a statute. It follows that Parliament should institute registration authorities where necessary, and that the statute should define their constitutions and powers but no more. It remains to find a method of exercising a sufficient degree of public supervision over them, and this supervision should be continuous and informed. It is sometimes attempted to secure public control by requiring the sanction of Parliament to the standing orders and regulations of the registration authority. Control of this kind is neither continuous nor informed. Such requirements are usually inoperative, but they make possible an intermittent review of the proceedings of these bodies in technical fields remote from the experience of the average member of Parliament. Nothing profitable, either to the practitioners or to the public, is likely to come of spasmodic parliamentary action of this kind. It is also possible to control through the relevant government department, the patent agents through the Board of Trade for example, and this is a more hopeful mode of procedure. Under this method control is continuous and, in one sense, well informed. But the attention of most government departments is concentrated on efficiency in certain spheres, and their interests are limited. Therefore they tend only to think of technical competence and to neglect broad problems, such as those of professional education in its wider aspects. It is inevitable that a government department charged with the supervision of certain services should hold that the ideal professional man is a zealous and efficient officer carrying out its policy in relation to these services; in this conception there is no room for corporate professional initiative and responsibility or for self-government. Under control of this kind mechanical efficiency may be achieved but at the expense of the vitality of the profession. The experience of

this form of control over the merchant navy and mine managers is sufficient evidence on this point. Moreover, there are important problems common to all professions, and there is thus a case against placing them under different departments. The Privy Council is already the department responsible for the control of five registered professions and has few other duties which are more than nominal.¹ This system of control has stood the test of time, and there is a strong case for making the Privy Council the department of state which has as its chief function the control of all the registered professions.² The case is the stronger because, owing to its power of granting charters, the Council already supervises the leading unregistered professions, so far as they are supervised at all.

If all control were exercised through the Privy Council, the knowledge of the problems of professionalism and experience in dealing with them would be concentrated in one department. Supposing this solution to be accepted, with what powers should the Privy Council be clothed? Four important powers have been given, though up to the present they have never all been conferred together in the case of one profession. But if control is to be adequate, they are all required in the case of each profession. They are the right to appoint representatives to the registration authority, the right to approve standing orders and regulations, the right to require annual reports from the authorities, and the ultimate right of supersession. The first enables the Privy Council to appoint laymen, if that is thought desirable, to the registration authorities; the second makes co-ordination possible; the last is a safeguard and no more. In one instance, that of the profession of pharmacy, the appointment of examiners is subject to the approval of the Privy Council, which also has power to inspect the examinations. This latter provision, however, is unnecessary, and would in fact hardly be workable under a multiportal system.

¹ The powers of the Privy Council over the Central Midwives Board were transferred to the Ministry of Health in 1919. This was a retrograde step. It tends to sever the vocation of midwifery from the professions with which it is desirable that it should become assimilated. It may be noticed that midwifery is the only vocation considered, entrance to which does not require a test of general education.

² 'The retention of the historical connexion of the Pharmaceutical Society with the Privy Council in pharmacy matters was strongly urged before us by the Society's representatives. It was pointed out that this relationship had worked well in the past; that the experience and mutual understanding gained by that co-operation were, in themselves, valuable; and that the professional status of pharmacy would suffer if it lost the privilege of dealing direct with His Majesty through the Privy Council.' The Committee themselves accepted this view. *Report of the Departmental Committee on the Poisons and Pharmacy Acts* (1930), p. 6.

What form should registration authorities take? Professional associations should not be converted into registration authorities, as has been done in the cases of veterinary surgery and pharmacy, because this is to endow what was in origin a voluntary association of practitioners with monopolistic powers. It is reminiscent of medieval times where state action was clumsy and lacking in precision and refinement. It should not be a government department because this involves the exclusion of the practitioners from any responsibility for the government and good order of the profession and fails to enlist their special knowledge. There remains the special body, containing representatives of the profession, elected by a vote of all the registered practitioners, of other bodies, such as the universities, and of the public. This form of organization has been found to work well; it is in line with that form of public control in other spheres to which opinion is now tending; and we suggest that it should be generally adopted with appropriate modifications in different cases.

If the registration authority takes the form of a special body controlled in this manner, how is it best constituted? That the Privy Council should appoint representatives has just been proposed; and while the Council would be free to appoint whom they chose, it would be normally by this channel that laymen would find a place on the authorities. Representatives of the profession would be chosen by ballot of all registered practitioners.¹ The relevant government department should have power to appoint representatives, and there is also a case for giving representation to the Board of Education in view of the important educational duties which registration authorities perform. If entry is by way of a university degree, the universities should have representation, as is now the case with the medical profession. The numerical allocation of representatives is not a matter of as much importance as is sometimes thought, and it is enough to suggest that at least half the seats should be given to the representatives of the profession and that the remaining seats should be allocated about equally between the other interests represented. It is most desirable that the size of these bodies should be kept within bounds and that the total membership should not exceed twenty and, if possible, should be less.² It is a merit of this form of organization

¹ Indirect representation through professional bodies is clumsy; and in the Teachers Registration Council, where it was at first adopted, it has already been abandoned for the direct method. We regret to see that the indirect method has been introduced into the recent architect's Act.

² It is disappointing to find that the body most recently constituted, namely the Board of Architectural Education, exceeds in size all those hitherto set up.

that it can be kept flexible, and care should be taken, when drafting statutes, to leave openings for changes to be made in representation with the consent of the Privy Council.

Accepting, for the purposes of the present discussion, that the professions to be registered are those suggested on p. 362, there is little difficulty in modifying this form of organization where it exists, so as to bring it into line with the above suggestions, and in setting it up where it is absent. There would have to be a reduction of numbers in the case of the G.M.C.; the unjustifiable disparity between the proportion of professional representatives, one-seventh in the case of doctors and a majority in the case of nurses, requires correction; room would have to be made in some cases for representatives of the Board of Education and of the relevant government department. Special modifications would be desirable in the cases of nurses and midwives. They are ancillary to medicine, and the G.M.C. might have power to appoint representatives to the bodies regulating them. The time is long past, on the other hand, when the profession of dentistry should be freed from subservience to the medical profession and should possess its own independent registration authority. Special bodies could be set up for the Bar, solicitors, patent agents, veterinary surgeons, pharmacists, and accountants.¹ There is no government department related to the legal profession, and unless a Ministry of Justice is brought into being, the Lord Chancellor might have power to appoint representatives. The cases of the merchant navy and the mine managers are somewhat different. They are registered to ensure public safety in certain spheres, to which end much other legislation has been devoted. It is essential that the Board of Trade should continue to supervise and co-ordinate the working of all this legislation, and in consequence it might be necessary for the Board to nominate at least half the members of the registration authorities in these two cases.

The remaining professions which require special consideration are teaching and public administration. No proposals with regard to teaching can have any immediate application which do not begin with the fact that most teachers are employed by local government authorities and are certificated by the State. So long as the State

¹ It is desirable that in applying these principles to particular professions there should be no greater disturbance of tradition than is absolutely necessary. Thus we should profoundly regret to see the passing away of such institutions as the Inns of Court. But, just as the Medical Act disappointed its critics by preserving and revitalizing the ancient medical corporations, so a reform of the legal profession would, we hope, preserve the identity and many of the functions of the ancient institutions which are peculiarly the embodiment of the professional tradition of the Bar.

contributes to their salaries, it will refuse to delegate the duty of hall-marking to any special body unless it has a large and safe majority on that body. To delegate this duty to a body on which the teachers had a majority would be to permit employees to say who should be employed. If this is so, it does not seem to be worth while to set up a special body merely in order to continue the present powers of the Board of Education. But the certificated teachers might have the right to be frequently and regularly consulted by the Board in relation to its exercise of these powers. Under these circumstances there seems to be no place for a special body for the teaching profession; in fact the Teachers Registration Council, as we have seen, has nothing to do. But it is possible, as we shall mention later, that there should be state-aided education without state certification of teachers, in which case a special body would be needed. Public administration also resembles teaching in that it is a state-salaried service. The argument, however, against permitting the executive servants of the State to say who shall enter and be expelled from their ranks is even stronger than in the case of teaching; the government must be master in its own house. At present a special organ of the State certifies those desirous of obtaining state employment, and there is no suggestion that this arrangement should be disturbed.

The chief duty of a registration authority is to control entry into the profession.¹ To carry out this duty it must possess the right to keep the register and the right to enter, or to refuse to enter, a name upon it. Given these rights, its control over entry would be complete, though it must be remembered that it would be supervised by the Privy Council in the ways that have been discussed if our suggestions were accepted. To what ends should it employ its powers? We have found reasons for preferring the multiportal to the uniportal system, and we desire its adoption in all cases. The multiportal system implies that the authority recognizes the diplomas of certain institutions as admitting to the register, and the question arises whether the authority should be free to recognize such institutions as it pleases or whether recognition should be given by statute to certain institutions. The latter arrangement prevails in the medical profession and amounts to the enforcement of the multiportal system by statute. We regard the multiportal system as so valuable that we do not wish the registration authorities to possess any option in the matter in the sense that they could adopt either the multiportal or uniportal

¹ The extent to which it is also a suitable body to expel from the profession will be discussed later.

system as they pleased. On the other hand, while in the case of the medical profession it is possible to give statutory powers to licensing authorities because they are few, the same is not true of other vocations, nursing for example. Where there would be a hundred or more examining bodies, it would be cumbersome to require that the frequent changes in the list, which would be inevitable, should be embodied in statutes. Therefore it seems in most cases necessary to rely upon the exercise of pressure by the Privy Council to induce these bodies to set up a multiportal system. It would be possible to enforce the multiportal system by omitting to give power to the registration authorities to conduct examinations themselves. But this is undesirable because this power could be used to facilitate the entrance into the profession of those who for some reason were unable to follow the usual course of training. Thus it seems desirable that they should possess this power, which should, however, only be employed with this particular object in view.

The main functions of the registration authorities would then be to keep the licensing bodies efficient. They could also discourage single-purpose training schools and attempt to ensure that students training for each profession studied alongside others training for different professions, since we have found this to be one of the most hopeful methods of overcoming the disadvantages of inevitable specialization. They could also discourage premature specialization and require a high standard of general education in the preliminary test. Furthermore, they could promote the extension of institutional training, both theoretical and practical; there is no reason why all theoretical education should not be conducted in institutions, and the institutionalization of practical training could be extended with great benefit. We are not proposing that these authorities should set up any new and untried system, but merely that they should bend their efforts to bring all professional education into line with the arrangements which, after much and varied experiment, have been found to work best.

Registration authorities have a place only where the State has intervened and ordained that there shall be a register and privileges attaching to registration. But it does not follow that the State has no concern with the unregistered professions. If an unregistered profession organizes itself as a voluntary association in the legal sense of the term, the State is not involved. But if the practitioners desire that the association shall be incorporated by compliance with the Companies Acts, as is often found convenient, application for registration must be made. The application must

show that certain general conditions have been complied with. It would be possible to empower the Board of Trade to insist upon particular conditions. Thus, for example, the powers of the Board could be extended so as to enable it to specify the conditions under which incorporated associations should conduct examinations. But this serious limitation upon freedom of association does not seem to be called for at present.

When the grant of a charter is made to a professional association, prestige is conferred by the State. It is usually also the case that a charter confers special privileges, such as the exclusive use of certain titles. The conferment of a charter is a most useful method of raising the status of a profession and therefore of its membership. It does something to fill the gap that would otherwise exist between the wholly unprivileged professions and the professions with monopolistic rights. But in these cases, since the State endows a profession with prestige and privileges, it is entitled to exercise some degree of supervision. It already does so through the Privy Council, and this arrangement is in line with the suggestion that the Privy Council should be the department of state responsible for the professions. The Privy Council controls chartered professional bodies because it can attach conditions to the grant of a charter, including a provision that by-laws shall remain inoperative until confirmed. We suggest that the Privy Council should always insert this condition, and with this weapon in its hands, it could bring pressure to bear. It could, for instance, exert its influence to bring the system of entry to the professions controlled by chartered bodies into line with its policy for the registered professions; it could press for a multiportal system, for institutional training, and for adequate supervision of practical training. It might be found advisable to attempt to induce the chartered bodies to form educational boards on the lines of the Board of Architectural Education, which has been set up by the R.I.B.A. and has functioned with success. Such a board would include representatives of the universities and of other teaching institutions. Its existence need not involve the abrogation of ultimate responsibility by the professional association. Indeed, the success of the Board has enhanced the prestige of the R.I.B.A.

PROFESSIONAL DISCIPLINE

Scope and Objects

WE have described a system which is designed to exclude altogether from the professions those who fail to pass certain preliminary tests. But such tests must inevitably be somewhat formal in character and have regard to intellectual attainments rather than to competence and integrity under conditions of actual responsibility. Yet the quality of the service rendered is of the deepest concern to the client. He places his health and his fortune in the hands of his professional advisers, and he entrusts them with confidences of an intimate and personal kind. He is interested therefore not only in the technical, but also in what may be called the moral, quality of the service. It is possible for the large employer of labour to find ways of testing for himself the efficiency and integrity of his salaried employees. But the typical professional man is not in the continuous salaried employment of any single individual or body. He is a free lance who is consulted by his client only as and when occasion demands. Consequently his client is seldom in a position to judge the quality of the service which he gets.

With regard to the rendering of services in everyday life, we find that the law has devised sanctions which up to a point safeguard the public against any failure to observe proper standards on the part of those who undertake skilled and confidential work. So far as these standards are moral they are only those of the criminal law; but the technical standard, embodied in the law of negligence, is adjustable, in that a man must bring to his work a degree of skill and carefulness proportionate to its difficulty and responsibility. The law regards as a civil wrong, for which damages can be recovered by the injured party, the incompetent execution of any act where the relationship between the parties is such as to give rise to a duty to exercise skill and care; and the relationship of professional and client is one to which such a duty is attached. Moreover, the duty arises out of the mere undertaking to render the service, and independently of any contract between the parties; consequently the liability is incurred whether the work is done gratuitously or for a fee. The degree of skill that must be shown is 'such as may be expected, in the circumstances of time and place, from an average person in the profession—one neither specially gifted nor extraordinarily dull'.¹ And an important proviso lays down that 'where this reasonable amount of information

¹ T. Beven, *Negligence in Law* (4th ed., 1928), p. 1322.

and skill proportioned to the duties that are undertaken is found, there is no liability for errors of judgement in the application of the knowledge'.¹ But the degree of skill required to be shown may be affected by the standing of the practitioner, provided this was known to the client. Thus, if the client knowingly consults a man who is not legally qualified, he cannot expect so high a standard; while if he consults a specialist, knowing him to be a specialist, it is the other way, and 'that might be negligence in a doctor of repute in the west of London which would yet come up to the highest warrantable expectations of the patient of the village doctor in remotest Kerry or Westmorland'.²

This is the extent to which the common law goes in the provision of sanctions for the competence and honour of professional men. Morally they must conform to a standard as high as, but no higher than, that which is expected of other members of the community. Technically they must conform to a standard appropriate to the work they do, unless it is within the knowledge of the client that they have special qualifications for it, or special disqualifications. It is important, however, to visualize the limitations of the legal guarantee. The court can order an incompetent practitioner to indemnify the victim of his negligence; but only if the victim himself chooses to go to the trouble and incur the risk of bringing an action. The court can also fine or imprison a practitioner convicted of fraud or embezzlement; but it cannot restrain either the incompetent or the criminal practitioner from continuing to practise his profession. The legal safeguard therefore is both clumsy and incomplete.

The machinery of professional government has been employed to give additional and more effective sanctions for the efficiency and integrity of professional men. These sanctions derive their force from the existence of the professional monopoly. We have seen that some degree of monopoly, either legal or customary, has arisen in every profession; that it attaches either to the register or to membership of an association, and that there is machinery for controlling admission to the privileged circle. Potentially, therefore, there is machinery for exclusion also, with consequent deprivation of the attendant privileges; and in fact, in almost every profession, powers have been conferred, or have been adopted, for using the machinery for this purpose.³ Their effectiveness, however, as sanctions for the quality of service rendered, neces-

¹ *Ibid.*, loc. cit.

² *Ibid.*, p. 1353.

³ No provision has been made for exclusion from the register of pharmaceutical chemists.

sarily varies from one profession to another, and is great or small according to the extent of the privileges forfeited.

Though the existence of disciplinary powers is almost universal, there is no uniformity in the purposes for which they are used. Among the registered professions it is found that in some instances they are used solely with the object of maintaining a standard of technical competence; in others solely with the object of securing the observance of a moral standard; while in a few instances both objects are aimed at. Chemists and druggists and colliery managers can be struck off for technical offences only; they fall into the first category. Nurses, midwives, teachers in elementary schools (whether 'certificated', 'uncertificated', or 'teachers of special subjects'), and officers of the merchant navy fall into the third category; they can be excluded either for technical or for moral offences.¹ All other registered professions come within the second category; exclusion is for moral offences only.

In the case of the chemists and druggists, the powers given are very meagre; persons can only be struck off where they have been found guilty of one of the specific offences created by the Pharmacy Act, 1868,² such, for example, as selling poison in a bottle not properly labelled. A colliery manager is likewise liable to forfeit his certificate for specific offences against the Coal Mines Act; but he is also liable to lose it for any 'incompetency or gross negligence or misconduct'.³

The provisions of the Merchant Shipping Act are clearly directed primarily towards the maintenance of a standard of technical competence. The certificate of a master, mate, or engineer may be suspended or cancelled if it is shown that loss of life, or the loss or abandonment of a ship, or serious damage to a ship, has been caused by his wrongful act or default; or if, in case of collision, he has failed to render the assistance which it is his duty to give or has failed to communicate immediately with the authorities in London; or again, if he has been found 'incompetent' or 'guilty of any gross act of misconduct, drunkenness or tyranny'.⁴ But a certificate can also be cancelled where the holder has been convicted of any criminal offence,⁵ though this clearly has no direct bearing on his technical competence.

¹ The civil servants should perhaps also be regarded as belonging to this group, since they are liable to be dismissed at any time on any grounds.

² 25 & 26 Vic., c. 91, s. 26.

³ 1 & 2 Geo. V, c. 50, s. 11 (1).

⁴ 57 & 58 Vic., c. 60, s. 470 (1).

⁵ *Ibid.*, s. 469. Besides these severe penalties, the captain of a merchant ship is liable to be removed from his post where the safety of the ship or crew or the interest of the owner is held to demand it; *ibid.*, ss. 472 and 483.

In the case of nurses, midwives, and teachers in elementary schools, the objects for which the power of exclusion is to be used are so loosely defined that everything depends on the interpretation put upon them. Midwives can be struck off for 'malpractice, negligence or misconduct';¹ nurses for 'any misconduct' and for any criminal offence.² In both cases the term 'misconduct' has been widely interpreted, and has been made to cover the distinctively ethical offence of advertising.³ It is not clear what is the precise effect of the rules regulating the employment of teachers in grant-aided elementary schools, but it is apparent that they can be used, and it is believed that they are used, to penalize both technical and moral offences.⁴

In the remaining registered professions the practitioner cannot be deprived of his professional status except for distinctively moral offences. In the Medical Act of 1858 power is given to erase the name of any registered medical man who has been convicted of felony or misdemeanour, or who can be shown to have been guilty of 'infamous conduct in any professional respect'.⁵ The phrase 'infamous conduct in any professional respect', which has been defined by the courts to mean 'something . . . which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency',⁶ has been widely copied. The same, or closely similar, words are to be found in the Acts or Rules regulating the professions of dentistry,⁷ veterinary surgery,⁸ architecture,⁹ and patent agency.¹⁰ In the solicitors' profession, where Parliament has omitted to define the purposes for which the power of exclusion is to be used, the court

¹ Rule D 1 of the Rules framed by the Central Midwives Board.

² Rule 17 (1) of the Rules framed by the General Nursing Council; see the annual *Register of Nurses*.

³ See *Report of the Central Midwives Board* for the year ended 31st Mar. 1927, p. 10.

⁴ It is laid down that 'the Board may, at any time, on educational grounds, recall or suspend the recognition of a teacher in any of the capacities aforesaid' (*Education Code 1926*, Schedule I, para. 7). This means that the teacher ceases to be 'recognized' for grant purposes as a 'certificated teacher', 'uncertificated teacher', or 'teacher of a special subject', as the case may be. It is also provided that if a teacher is convicted of a criminal offence, or if his engagement is terminated 'on account of misconduct or grave professional default', the fact must at once be reported to the Board, who then investigate the matter (*Education Code 1926*, clause 18). If, as a result of the investigation, 'the Board declare a teacher to be unsuitable for employment on grounds of misconduct or grave professional default, the teacher must not be employed' (*ibid.*, clause 19).

⁵ 21 & 22 Vic., c. 90, s. 29.

⁶ *Allinson v. The General Medical Council*, [1894] 1 Q.B. 750; *per* Lopes L.J. at p. 763.

⁷ 41 & 42 Vic., c. 33, s. 13.

⁸ 21 & 22 Geo. V, c. 33, s. 7.

⁹ 44 & 45 Vic., c. 62, s. 6.

¹⁰ *Register of Patent Agents Rules*, 1920, clause 17.

has adopted the same definition as was used in interpreting the Medical Act. The prosecutor must prove either a criminal conviction or 'something which would be reasonably regarded as disgraceful or dishonourable by solicitors of good repute and competency'.¹ Barristers and registered teachers resemble solicitors in that the purposes for which the disciplinary authority of the profession is to be used are nowhere explicitly defined in any statutory instrument. Nevertheless, though the discretion of the benchers is unfettered, barristers are never disbarred for technical incompetency, but only for dishonourable conduct. There is as yet no evidence of how the Teachers Registration Council will use the powers that have been conferred upon it; but it may be deduced from a clearly inspired article communicated to *The Times Educational Supplement* that it is expected they will be employed primarily to uphold the canons of 'good form' and 'decent behaviour'.²

We have seen that the registered professions, when classified according to the uses to which their disciplinary powers are put, fall into three categories. Further examination of these categories reveals that all of what are generally regarded as the major professions fall into the second of them, the minor professions being distributed between the first and third. Two questions immediately suggest themselves. Why are the tribunals, which are responsible for maintaining discipline among colliery managers and officers of the merchant navy, precluded from considering, in the one case all moral offences, in the other all moral offences that are not so grave that they come within the scope of the criminal law? Again, why, in the major professions, is the tribunal precluded in all cases from considering a charge of technical incompetence?

The first question is perhaps more easily answered than the second. Neither the colliery manager nor the officer in the merchant navy is a free lance. The possibility of a sharp cleavage of interest between practitioner and client is therefore considerably less than in some professions. Again, the position held, though one of responsibility, is not one in which personal confidence is reposed in the holder. It is at first sight more difficult to understand why doctors and dentists, barristers and solicitors, though liable to be struck off for dishonourable conduct, are exempt from liability in case of technical incompetence. The safeguards em-

¹ See *Laws of England*, ed. Earl of Halsbury, 1st ed., vol. xxvi (1914), para. 1376, and the cases there cited.

² See *The Times Educational Supplement* for 1st Jan. 1927.

bodied in the entrance test and in the law of negligence no doubt afford some explanation. But they do not explain why, if additional safeguards are thought necessary in the case of colliery managers and officers of the merchant navy, they are not thought necessary in the case of doctors and barristers as well. The real explanation must be sought in the nature of the professional function. In the navigation of a ship or the inspection of a mine, the essential element, from the point of view of the safety of the public, is the proper observance of a routine. In the practice of law or medicine, on the other hand, the essential element is the exercise of the faculty of judgement, and its exercise, moreover, in circumstances where the validity of the judgement must be a matter of opinion. It is not suggested that this distinction can be pressed indefinitely far. The point which requires emphasis is that the main object of state registration of mine managers and officers of the merchant navy is a negative or preventive one, namely, the avoidance of catastrophe; and it is primarily upon the observance of a routine that this depends. In the case of doctors and lawyers, on the other hand, the main object is positive and constructive, namely, the successful treatment of disease and the assistance of persons in the ascertainment and prosecution of their legal rights; and what is needed for its achievement is, not caution, but good judgement. If, however, the exercise of judgement is as fundamental as is suggested in the work of a barrister or doctor, it would be disastrous if the fear of being called upon to answer for the consequences were never absent from his mind. He would be tempted always to play for safety, and never to depart from rule-of-thumb methods whose antiquity would be their chief recommendation. It may be objected that the doctor is already exposed to the risk of having to defend his methods in an action at law. This is so; but it only serves to illustrate the dangers of attempting to penalize technical incompetence. In common law actions for negligence, the point on which the jury tend to fasten is always whether a routine has been followed or not. If it has, the doctor is safe. If it has not, then, no matter how weighty the expert evidence called to show that in the circumstances he was justified in coming to the conclusion he did, the jury will tend to take an unfavourable view of his case. It would be possible, no doubt, were power to be given to strike a doctor off the register for technical incompetence, to entrust that power to a tribunal composed preponderantly of doctors; but this would be open to another objection. The danger would not perhaps lie in too great an insistence upon the observance of a routine, but in the facilities it would offer for heresy-

hunting. The rival theories of medicine current among doctors are notorious. Equally notorious is the hostility shown by the upholders of one theory or orthodoxy towards the upholders of another, and the anxiety of each to impose his own pet beliefs upon the rest of the profession. The fear that the G.M.C. might be tempted to use its authority for the institution of heresy-hunts was clearly present in the minds of those who framed the Medical Acts and the Dentists Acts, even though it was not proposed to give the Council power to strike off for technical incompetence. In each case they took the precaution of adding a proviso prohibiting the exclusion of any registered person 'on account of his adopting or refraining from adopting the practice of any particular theory'¹ of medicine, surgery, or dentistry as the case might be. But, though it may be possible to prevent the G.M.C. from using the powers it now has for the purpose of penalizing the holder of some theory of medicine which differs from those of its own members, it would be very much more difficult to exclude these doctrinal issues if the Council had power to punish technical as well as moral offences. A compromise may be suggested which, without penalizing the doctor in any case in which he is not penalized already, would at the same time make it possible to protect the public against medical men convicted of gross negligence or incompetence. The suggestion is that, where a successful action for negligence is brought against a doctor, the fact should be reported by the court to the General Medical Council. The Council should then have power, if they think fit, to strike the doctor off the register.

In the discussion of this point the case of the medical profession has been selected as the most difficult. It is the existence of rival orthodoxies which creates the difficulty; and these, it will be seen, have their origin in circumstances peculiar to the medical and allied professions. They arise because the technique, though based upon a science, is based upon a science which is not exact, and which, in the present state of knowledge, requires a large amount of guess-work in its application. In the other major professions, though it is important not to penalize errors of opinion, or to frighten practitioners into playing for safety, the dangers are not so great. Consequently there is even less reason why the suggested addition to

¹ Quoted from the *Dentists Act*, 41 & 42 Vic., c. 33, s. 13. Similar wording is to be found in the *Medical Act*; see 21 & 22 Vic., c. 90, s. 28. It is thus quite incorrect to say, as Mr. W. A. Robson does (*Justice and Administrative Law* (1928), p. 176), that the G.M.C. can condemn to 'economic ruin' and 'professional ostracism' 'a man whose only sin may have been the adoption of scientific ideas antithetic to those of his more backward colleagues'.

the powers of the G.M.C. should not be made in those professions also.

In the registered professions it is the statute, or rules made thereunder, which determines the offences for which a man is liable to forfeit the status which registration gives. In the unregistered professions, where the status is derived from membership of an association, it is to the charter or other governing instrument of the association that we must look to find when and how, in these professions, the status may be lost. So far as we are aware there is no professional association which is without the power to exclude from membership.

It is unnecessary to study the charter or memorandum of every association, since, with a few exceptions, they are very much alike. The more important unregistered professions have chosen the more important registered professions as their model, and have set out to penalize moral offences, not technical inefficiency. The charter of the Institute of Chartered Accountants may be taken as typical. The charter formulates certain 'Fundamental Rules' which constitute a sort of code, and provides for the exclusion of any member who breaks a 'Fundamental Rule'. These are followed by a list of offences of a more general nature which may also be grounds for expulsion; namely, felonies, misdemeanours, bankruptcy, or any other arrangement or composition with creditors, fraud, and lastly, 'any act or default discreditable to a Public Accountant'.

However, in descending the scale of the unregistered professions, as in the registered professions, a point is reached where criminal or dishonourable conduct ceases to be ground for exclusion; but its place is taken, not by exclusion for technical incompetence, since the public safety is not involved, but by exclusion for offences against what may be called the trade union code. Thus the distinctive feature of the true professions, as that term is generally understood, is not the possession of disciplinary powers, but the use to which they are put. Every trade union, in fact every social club or learned society, adopts in its rules some disciplinary clause giving power to expel, fine, or otherwise punish, members who will not pay their subscriptions, who are disorderly at meetings, or who are guilty of conduct in some way inimical to the interests of the members as a whole. In the particular case of the trade union it is normally an occasion for disciplinary action if a member accepts employment at less than the authorized rate of wages; and it is of interest therefore to inquire where the dividing-line comes between associations whose disciplinary authority is used primarily for the enforcement of an ethical standard and

associations whose authority is used primarily for the maintenance of wage-rates or for some other non-ethical object.

It is noteworthy that the London Stock Exchange, whose claim to the title of 'profession' has been questioned on account of the absence of any prescribed intellectual training, does employ its disciplinary machinery for ethical purposes. Applying the present standard, it appears that only two of the professions considered in the first part of this study, the journalists and the musicians, show definite evidence of their attachment to another world. Indeed the journalists are an interesting border-line case. In the Institute there is a code of fundamental rules, and if a member violates a fundamental rule, or 'is held by the Council . . . to have been guilty of any act or default discreditable to him as a journalist or otherwise', he is liable to be expelled from membership.¹ The rules of the National Union, on the other hand, make no such provision; but they ordain that 'a member applying or negotiating for an appointment shall first ascertain from the General Secretary the schedule of wages (if any) paid in the area of the appointment, and he shall not accept or offer to accept any remuneration at a lower rate than that provided by the schedule'. If he does so he will be 'liable to expulsion'.² In the rules of the Musicians Union, though we find no mention of wage-rates, we again find provisions which contrast strikingly with those incorporated in the Medical Act or in the charter of the Institute of Chartered Accountants. 'Any member guilty of a fraud upon the Union', and any member who is found to have stolen the property of the Union, or to have falsified the books of the Union, or who has refused to obey the rules, or whose subscription is seriously in arrear, or who 'in any way imperils its existence or the interests of any member or members shall after due trial and conviction thereof be fined and expelled'.³

The peculiarity of the Musicians Union and of the National Union of Journalists does not reside in the fact that disciplinary powers are used for protective ends, but in the fact that they are used only or mainly for those ends. In the typical 'professional' association, though disciplinary action may be employed for protective purposes, these are never the sole or even the chief uses to which it is put.⁴ In the registered professions the statutory tribunal cannot use its powers for any object other than those laid down

¹ Institute of Journalists, *Grey Book* (1928), pp. 14 and 15.

² National Union of Journalists, *Rules* (1925), p. 1.

³ *Rules of the Musicians Union* (revised 7th Mar. 1928), pp. 32 and 33.

⁴ The distinction is not a rigid one. There are rules which serve the ethical purpose of aiding the client to get the best service, and at the same time pro-

in the Act (or Rules); and in no case has a statutory tribunal been given authority to strike off the register for failure to conform to an economic policy. In the unregistered professions the responsibility assumed by the association for the intellectual and moral fitness of its members has generally produced a disinclination to undertake the somewhat invidious role of an actively protective body. Thus the Institute of Chartered Accountants has shown reluctance to authorize the publication of a scale of fees, which is certainly in part attributable to the feeling that activity of this kind would detract from its impartiality as first and foremost a hall-marking body. Other hall-marking associations have shown less disinclination; for example, the R.I.B.A., which warns and suspends members for economic offences, and unquestionably regards itself as free to resort even to the final penalty of expulsion. Nevertheless we know of no instance, even in the R.I.B.A., of actual deprivation of the primary hall-mark, the associateship, for a purely economic offence. Thus protective activities are most easily undertaken by associations in the registered professions. In these professions hall-marking is a matter for the registration authority, and deprivation of the hall-mark a matter for the statutory tribunal. Expulsion from an association therefore leaves untouched the practitioner's legal privileges, and the association need not act with the same caution in employing for protective purposes such sanctions as are open to it. Nevertheless the British Medical Association, which pursues perhaps a more forward economic policy than any other association in the professional world, is very far from employing its disciplinary machinery solely for economic ends. Moreover, conformity to the protective, and indeed the ethical, policy of professional associations is ordinarily secured without recourse being had to the grave penalties of expulsion and suspension,¹ which are by no means the only weapons available. In medicine the important part played by the consultation makes it possible to secure conformity to professional policy by means of the boycott; and the boycott of a practitioner, though rarely employed, is a recognized weapon in the armoury of the B.M.A.² Again, so long as social standing is valued, either for

mote the economic ends of the association; for example the rule against price cutting, see below, p. 432.

¹ In 1927 the Medical Secretary of the B.M.A. said that there had only been thirty-five expulsions from the Association in twenty-five years; see *British Medical Journal* (1927), vol. i, p. 1039. He did not state what proportion of these were for failure to conform to the Association's economic policy. But it is evident that the proportion must have been small, because he said that it was only 'very occasionally' that the B.M.A. had expelled for such a cause; *ibid*.

² In regard to this matter the Medical Secretary of the B.M.A. has stated

itself or for the advantage which it gives in the building up of a practice, an association can bring pressure to bear through social channels;¹ and this method of social boycott can be used either alone or in conjunction with the method of professional boycott through refusal to meet in consultation. Of more importance, however, than any of these weapons, because more frequently and continuously employed in every profession, is the silent pressure of opinion and tradition, which begins to be absorbed by the clerk or the student as soon as he enters the office or the professional school, and which is constantly around him throughout his professional career.

Judicial Machinery

We have shown that in nearly every profession there is power to exclude from its ranks those who fail to conform to certain standards of conduct. Later we shall consider in some detail the specific rules of conduct, conformity to which is expected in the fully developed professions; but, before doing so, it will be convenient to inquire into the process by which any allegation of failure to observe these standards is investigated and determined. In a registered profession this is a matter which is generally dealt with in the Act. In a professional association provision for the investigation of penal charges is normally made in the memorandum and articles or charter and by-laws as the case may be. However, any association has at common law a right to refuse admittance to, or to exclude after admission, any person with (*British Medical Journal*, loc. cit.) that 'there is the power, after a careful inquiry surrounded by all sorts of safeguards, and after declaring that the conduct of the practitioner has been "detrimental to the honour and interests of the medical profession" for a Division to issue a notice to its members stating that "It is undesirable that a member of the Division should meet in consultation or accord any professional recognition (other than such as may be necessary in the discharge of an official duty by a public medical officer or in circumstances of great urgency affecting the life of a patient) to a medical practitioner who shall have been declared by resolution of the Division to have acted in contravention of any rule or resolution of the Division as to professional conduct, of which such practitioner shall be proved to have had notice in accordance with these rules, or who shall have been declared by resolution of the Division to be deemed guilty of conduct detrimental to the honour and interests of the medical profession"'. But this action, he said, had only been taken in seven cases in twenty-five years.

¹ On an occasion when a veterinary surgeon, not a member of the National Veterinary Medical Association, accepted a public appointment in Jersey at a salary against which the Association had protested, the following appeared in the *Veterinary Record* (vol. iii (1923), p. 614): 'We hope that veterinary surgeons practising in the Channel Islands will unite in letting him know how the profession regard his action, and will be exceedingly chary of extending to him the usual courtesies that are exchanged between professional men.'

whom the members are unwilling to associate; and though the charter or other governing instrument may limit the right or define the manner and circumstances in which it is to be exercised, nevertheless, in the absence of any such provision, the right is given by the common law, which at the same time makes certain general requirements' in regard to procedure. Moreover, these requirements are extended to associations which have laid down their own procedure and also to the registered professions, save in so far as they are expressly abrogated; and even where an association makes its own rules, they must be so framed as not to conflict with certain broad principles of justice.¹

The first of these general requirements is that there should be a specified tribunal for hearing the charge. In a purely voluntary association having no rules bearing on the point the tribunal would be the association in general meeting;² but in practice, in the associations with which we have to deal, a tribunal is invariably specified. In a few instances the tribunal specified is the association in general meeting, as, for example, in the case of a complaint against an associate of the Institute of Actuaries; but more commonly it is the council or other executive organ. In the registered professions the registration authority is generally specified as the tribunal. Thus at the Bar it is the benchers of the Inns of Court, for doctors the General Medical Council, for patent agents the Board of Trade, and for nurses and midwives the General Nursing Council and the Central Midwives Board respectively. But to this rule there are certain exceptions. Chemists and druggists can only be struck off by the Privy Council, and solicitors by a committee appointed by the Master of the Rolls from among the members or past members of the council of the Law Society. In the case of a colliery manager, any inquiry into his fitness to continue to hold a certificate must take place before 'such county court judge,

¹ For a non-technical summary of the law as it affects the judicial powers of associations, see W. A. Robson, *Justice and Administrative Law* (1928), pp. 161 ff. What is said here is to be understood as referring only to associations of the type considered in this study. In any association where the members have anything in the nature of property rights (and professional associations all come within this category, since forfeiture of membership may be very damaging to a man in his career), the courts will interfere to see that the powers of the association are exercised judicially and in accordance with the requirements of 'natural justice'. There are associations where the law will not interfere between them and their members in any circumstances; while any association which is legally a trade union becomes subject to a number of Acts and judicial decisions which differentiate trade unions from all other associations. Nevertheless what is here said about specifically professional associations and their judicial functions in relation to professional conduct probably does apply to every professional association, even if registered under the Trade Union Acts.

² Indeed a unanimous vote of all the members might be required.

metropolitan police magistrate, stipendiary magistrate, or other person or persons . . . as may be directed by the Secretary of State [now the Board of Trade], and either alone or with the assistance of any assessor or assessors named by the Secretary of State [now the Board of Trade]'.¹ In the case of an officer of the merchant navy the tribunal varies with the circumstances in which the case has arisen. It may be a court of summary jurisdiction, a naval court, a person appointed by the Board of Trade, or a local marine board. If the inquiry takes place before a court of summary jurisdiction, there must be two nautical assessors, one of whom must concur in the finding; while if it is held before a local marine board or a person appointed by the Board of Trade, a stipendiary magistrate or other competent assessor appointed by the Board of Trade must be present. Dentistry and architecture may also be regarded as partial exceptions to the rule that in the registered professions the functions of registration authority and disciplinary tribunal are entrusted to the same body. For though actual erasure is a matter for the registration authority, the G.M.C. in the one case and the Architects' Registration Council in the other, nevertheless the G.M.C. cannot act save on a report by the Dental Board, nor the Architects, Registration Council except on the recommendation of the Discipline Committee.²

Before proceeding to consider such further requirements as are derived from the concept of natural justice, it will be convenient to ask what is suggested by the experience of different professions as the ideal type of professional tribunal. Of the unregistered professions there is little to be said. If the State leaves a profession to settle its own government through a voluntary association or limited or chartered company, neither conferring upon it substantial privileges nor subjecting it to special obligations, it is right that the State should also leave it free, subject to the general supervision of the common law, to settle its own machinery for the maintenance of its own standards. But where on the other hand the State sets up a register and confers legal privileges upon registered persons, it becomes a matter of concern to the State how those privileges may be forfeited. Dealing first with the true professions, it seems on general grounds desirable that there should be but one governmental authority in each profession, which should be responsible both for registration and for discipline. How the authority responsible for admission and registration should be

¹ 1 & 2 Geo. V, c. 50, s. 11, as amended by 10 & 11 Geo. V, c. 50, s. 2.

² Here, and elsewhere in this section, the reader may find it useful to refer to Table VII.

TABLE VII
PROFESSIONAL TRIBUNALS

<i>Profession</i>	<i>Preliminary Investigation</i>		<i>Formal hearing</i>	<i>Judgement and Sentence</i>	<i>Appeal</i>
	<i>By custom or standing order</i>	<i>By statute</i>			
Barristers	Bar Council	..	Benchers of Inns of Court		Judges
Solicitors	..	..	Discipline Committee		High Court
Patent Agents	..	..	Board of Trade		None
Doctors	Penal Cases Committee of G.M.C.	..	G.M.C.		None
Dentists	Penal Cases Committee of Dental Board	..	Dental Board	G.M.C.	High Court
Nurses	..	..	General Nursing Council		High Court
Midwives	..	..	Central Midwives Board		High Court
Veterinary Surgeons	..	Committee of Council of R.C.V.S.	Council of R.C.V.S.		Privy Council
Architects	..	Architects' Registration Council	Discipline Committee	Architects' Registration Council	High Court
Registered Teachers	..	*	Teachers Registration Council		None

* Where a teacher so desires, there must be a preliminary investigation before a Committee appointed by the Teachers Registration Council, but including two members appointed from outside the Council. This requirement is made in the Order in Council, and is therefore to be regarded as 'statutory' rather than customary.

constituted is a point which has already been discussed. We have contended that it should be composed in the main of representatives of the practitioners and of the licensing authorities with additional members appointed by the Privy Council and the relevant government department, some of whom might be laymen. Such a body seems also to fulfil the requirements of a disciplinary tribunal, subject to one qualification. Experience has shown that to appreciate the professional man's attitude to many of his problems is often a matter of no little difficulty to the layman; and instances have been quoted, notably those of the patent agents and the solicitors, where the relegation of disciplinary functions to a body not composed of members of the profession has been only too effectual in preventing standards of conduct from rising to the level demanded by responsible opinion in these and other professional callings. For it cannot be too strongly emphasized that professional standards have been created by professional opinion; and we do not see how they can be maintained, far less raised, unless their enforcement is a matter for professional men. If therefore it is thought desirable, for the proper discharge of its educational functions, that the personnel of the registration authority should include a lay element, it would be important to provide that the professional representation on the authority should never fall below one-half; indeed there are arguments for delegating the disciplinary functions of the authority to a committee upon which the lay members would not sit.¹ This would not preclude the co-option of a legal assessor to advise the tribunal on matters of evidence and procedure; nor does it preclude an appeal from the tribunal to the High Court. These are points we discuss later; but the tribunal itself, as it has to register the opinion of professional men upon a certain course of conduct, so it should itself be preponderantly, if not wholly, composed of professional men.²

The considerations here advanced apply in general also to those minor professions where the technique is less intellectual, and

¹ It will be observed that in the case of the two most recently constituted tribunals, those for architects and registered teachers, this principle has not only not been followed, but has actually been reversed. Any charge brought before the Teachers Registration Council as reconstituted in 1926 must, if the teacher concerned so desires, be first investigated by a committee on to which two persons are co-opted from outside the Council; while it seems probable that the lay representation on the Discipline Committee under the Architects Registration Act will be proportionately greater than on the Board of Architectural Education where it will also be very large. See Appendix II.

² It follows that the subjection of dentists to what is virtually a tribunal of doctors cannot be upheld, and that the disciplinary powers of the G.M.C. over dentists should be transferred to a reconstituted Dental Board.

where the chief danger to the public lies in a failure of technical competence rather than moral competence: nurses, midwives, colliery managers, and officers of the merchant navy. We do not feel called upon to discuss in detail what should be the precise constitution of the tribunal in these professions or quasi-professions. Indeed it must depend upon the circumstances. A domestic tribunal may be a suitable body to inquire into the conduct of a registered nurse; but clearly it would not be a suitable body for holding a formal investigation into a shipping casualty. It may be emphasized, however, that the tribunal ought always to include, either as members or as assessors, at least some representatives of the practitioners themselves. Thus the appointment of assessors to assist in an inquiry under the Coal Mines Act should not be left wholly to the discretion of the Board of Trade.

The principles of natural justice not only require that any proceedings, which may jeopardize a man's status on a professional register or in a professional association, shall be preferred before a specified tribunal, but also that every member of the tribunal shall receive due notice of the sitting at which a charge is to be heard, though the proceedings are not vitiated if every member does not attend. The accused must receive notice of the allegations that are made against him, and must be heard in his own defence if he so elects. The functions of judge and prosecutor must not be united in the same person, so that if any member of the tribunal has been in any way concerned in the bringing of the charge, he must retire before the hearing commences;¹ while care must be taken that the tribunal does not overstep its own jurisdiction.

These are the minimum requirements. It is perfectly open to the tribunal to go further in the direction of assimilating its procedure to that of a court of law; and this in fact is commonly done. Thus the G.M.C. regulates its procedure by standing order; and though it can at any time amend its standing orders or revoke them altogether, nevertheless, while they remain in force, they become part, so to speak, of the common law requirements of a fair trial, so far as doctors and dentists are concerned. The standing orders of the G.M.C., in their present form, give either party the right to appear by counsel, provide for the exchange between the parties of something analogous to pleadings, regulate the examination, cross-examination, and re-examination of witnesses, and provide also for the attendance of counsel as judicial assessor.²

¹ See *Law v. Chartered Institute of Patent Agents*, [1919] 2 Ch. 276.

² See *Standing Orders of the General Medical Council* (1925), chapter 14 and

If either the minimum requirements of natural justice, or the self-imposed rules of the tribunal, are not complied with, the accused can appeal to the courts. But though an appeal lies from any domestic tribunal where the procedure has been such as would be held to amount to a denial of justice, it is, generally speaking, only on the point of procedure, and not on a point of substance, that the appeal can be brought. Provided certain fundamental rules of procedure are followed, and provided also the rules of the association or tribunal are not transgressed, the courts will not inquire into the grounds upon which a domestic tribunal arrives at its decision; and this applies, not only to the tribunal of a voluntary association, limited company, or chartered corporation, but also to the statutory tribunal in a registered profession.¹ The G.M.C. is an instance; it is empowered to strike a name off the register for certain offences. The Act says nothing about an appeal; and therefore no appeal lies—except on a point of procedure. Equally there is no appeal by a patent agent from a decision of the Board of Trade. Nevertheless there is a limiting case, in which the court may come very near to entertaining an appeal upon a point of substance; for it is a general principle that if there was no evidence to support the decision to which the tribunal came, then it has exceeded its jurisdiction and the court can intervene to set the decision aside. In such a case, it is clear, the court will have to consider both the evidence and the charge, in order to see, not whether the evidence did, but whether it could, amount to proof of the charge. Therefore although a medical practitioner cannot appeal to the court from the G.M.C. upon the point of substance that his conduct did not amount to ‘infamous conduct in a professional respect’, nevertheless he can appeal upon the ostensibly procedural point that his conduct could not have amounted to infamous conduct; and to settle appeals of this

Schedule thereto. Where a matter comes before a tribunal as a result of a conviction for felony or misdemeanour, the tribunal does not re-investigate the facts, but accepts the finding of the court upon them, and immediately proceeds to consider whether or not they are such as to justify erasure or expulsion. An elaborate procedure is therefore unnecessary. An interesting position arises when, as may occasionally happen, a charge of unprofessional conduct is brought, which is based upon facts which, if proved, would constitute a criminal offence. In such a case the tribunal would not normally consider the matter until it had been investigated by the court. However, it is possible that a prosecutor, without desiring a legal conviction, might yet wish to have certain facts considered with relation to a practitioner's position on a professional register or in a professional association. In such a case there would, it appears, be no objection to the tribunal considering the facts from this point of view, although they had not been substantiated in a court of law.

¹ Unless there is anything in the statute to the contrary.

nature, the court has had to work out what amounts to a limiting definition of 'infamous conduct'. This it has done in the following terms: 'If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful and dishonourable by his professional brethren of good repute and competency, then it is open to the General Medical Council to say that he has been guilty of infamous conduct in a professional respect.'¹ The definition is admittedly wide; yet it is evidently not so wide as to preclude the success of an appeal, upon what would in effect be a point of substance, provided the appellant could bring into court a sufficient volume of medical testimony. In fact, however, the doctors and the patent agents form the exception rather than the rule in this matter; and recent registration Acts have in most cases expressly provided a right of appeal.² Under the Veterinary Surgeons Act appeal lies to the Privy Council. In the case of solicitors, dentists, nurses, midwives, officers of the merchant navy, and architects, there is an appeal to the High Court; while from the benchers of the Inns appeal lies to the judges sitting as a domestic tribunal, though from them there is no further appeal.

On the general question of a right of appeal, it seems to us proper that an appeal should lie from every statutory professional tribunal to the High Court, more especially if the tribunal is in many cases to consist solely or preponderantly of practitioners of the profession; but it is important that the right, if given, should not be abused. The standards we wish to see enforced are the higher standards of professional opinion, not the lower standards of laymen or of the criminal law; and it is only because, in appeals of this kind, we expect that the High Court would be as reluctant to disturb the finding of a professional tribunal upon a matter of professional opinion, as it is to disturb the findings of any lower court upon a question of fact, that we think it should be empowered to entertain such appeals. In this connexion it will be instructive to see what attitude the court has in fact adopted towards appeals from professional tribunals where they already exist. The issue arose in a clear form in 1924 in an appeal from the Discipline Committee under the Solicitors Acts;³ and the court, in pronouncing judgement, showed that it was scarcely more willing to upset the decision of a professional tribunal where an appeal has been given than where no appeal lies save on a point of procedure.

¹ *Allinson v. G.M.C.*, [1894] 1 Q.B. 750 (C.A.); *per* Lopes L.J. at p. 763.

² Colliery managers and chemists and druggists fall into the same class as doctors and patent agents. There is no appeal.

³ In the case of *In re a Solicitor* (No. 2) (1924), 93 L.J.K.B. 761.

'Although no doubt section 8 [of the Solicitors Act, 1919] gives an appeal, and although that appeal is under the rules [made pursuant to the Act] in the nature of a re-hearing; nevertheless, as it seems to me, it is right that this Court should pay the greatest attention not only to the findings of the committee under this Act, but also, and not least, to the mode in which that experienced body has exercised its discretion.'¹ 'I entirely agree that it is not for this Court, with the powers of appeal that are given it, to interfere lightly with the discretion of the Committee, or at all, unless it sees that the committee has gone wrong in some matter of high degree, or some matter of principle. . . . The discretion has been in my view conferred upon the committee by Parliament, . . . and this Court should not readily interfere with it.'²

In nearly every profession, registered or unregistered, some provision will be found for the preliminary investigation of all charges by some body other than the tribunal itself in full session. This is not part of the minimum requirements discussed above; but it is a very necessary and salutary safeguard. No professional tribunal is obliged to conduct its business in public, except where it derives its authority from an Act and the Act distinctly lays it down that it shall be so conducted, as, for example, does the Coal Mines Act. Nevertheless, once a charge has reached the stage of coming before the full tribunal for formal hearing, it is obvious that the fact will rapidly become known, at least within the profession, if not also to the outside world. Consequently a slur may be cast upon the professional character of the accused, even though the accusation is dismissed.³ Sometimes the preliminary investigation takes place before a body which is a mere grand jury having no power except to dismiss a purely frivolous charge. This is the part played by the Penal Cases Committee of the General Medical Council when an accusation of professional misconduct is brought against a doctor.⁴ Sometimes the functions of grand jury and petty jury are combined; and in such cases it simply remains for the tribunal to pass judgement upon the facts as found at the preliminary inquiry. Here the veterinary surgeons are an instance. A charge comes in the first place before a committee of the council.

¹ *Per* Lord Hewart C.J. at p. 763.

² *Per* Roche J. at p. 763.

³ That the proportion of cases which never proceed beyond the stage of preliminary investigation is very large is apparent from evidence given before the Departmental Committee on the Registration of Accountants (*Minutes of Evidence* (1930), p. 8). Mr. Cash, a member of the Investigation Committee of the Institute of Chartered Accountants, said 'we get, on our Investigation Committee, perhaps anything from six to seven complaints a month, but a great many of these complaints turn out on investigation to be matters which are not pursued to a conclusion. The number of cases brought before the Committee per year that get beyond the Committee would be perhaps eight or ten.'

⁴ See *Standing Orders of the General Medical Council* (1925), chapter 14.

The finding of the committee is 'conclusive as to the facts';¹ but in regard to the merits, 'the Council shall form their own judgement on the case independently of any opinion of the committee'.² In the professions of dentistry and architecture there are three stages to every investigation. A charge against a registered architect must, under the Act, come in the first place before the Architects' Registration Council, which acts as grand jury. Where 'it appears to the Council' that an inquiry is necessary, an inquiry is then held by the Discipline Committee.³ If the Discipline Committee do not think that the person charged has been guilty of conduct disgraceful to him in his capacity as an architect, then the matter proceeds no further. If, on the other hand, they report that he has been guilty of such conduct, then the Council may (or may not) cause his name to be removed from the register. By standing order of the Dental Board, a charge against a dentist comes first before the Penal Cases Committee of the Board, which acts as grand jury, then before the Board itself. If the Dental Board, whose finding is conclusive as to the facts, report that the dentist ought to be struck off the register, the case goes to the General Medical Council, which can hear further 'observations' on the merits, and on the basis of the report and the observations, if any, can order erasure or not as it thinks fit.

As an additional safeguard against the oppressive use of disciplinary powers it is common in the case of professional associations (though rare in that of statutory tribunals) to require something more than a bare majority for a conviction. Thus (the sole instance in a registered profession) a name cannot be erased from the register of veterinary surgeons except at a meeting of the council of the R.C.V.S. 'at which not less than two-thirds of the members are present, and with the consent of three-fourths of the members so present'.⁴ We think it would be well if every tribunal in a registered profession or chartered association were required (by statute or by the Privy Council as the case might be) to hold a preliminary investigation in all cases; but it is open to question if the requirement of something more than a bare majority for a conviction is of any great value.

With the exception of the tribunals set up under the Merchant Shipping and Coal Mines Acts which either are, or have the powers of, courts of law, professional tribunals in general (whether

¹ 44 & 45 Vic., c. 62, s. 8 (1).

² Ibid. It will be observed that the preliminary fact-finding committee under this Act is a statutory body. The Penal Cases Committee of the G.M.C. on the other hand is not.

³ 21 & 22 Geo. V, c. 33, s. 7 (3).

⁴ 44 & 45 Vic., c. 62, s. 6.

statutory or voluntary), though they share the disabilities of a court in that they must proceed in accordance with the principles of natural justice, are yet without the powers, which every court has been given, to enable it to elucidate successfully the matters in issue before it. They cannot subpoena witnesses or order the production of documents; they cannot order the expenses of witnesses to be paid, or put them on oath should they choose to attend and give evidence;¹ neither can they make any order as to the costs of a hearing. It is perhaps neither necessary nor desirable that the voluntary tribunal of a professional association should have these powers; but in the registered professions, where erasure carries with it a definite legal disability, and, in the case of a patent agent or a dentist for instance, economic consequences of extreme gravity, it seems only just that the accused, and also the public in the person of the prosecutor, should have the same rights as before any other judicial body having power to impose a legal disability. Nor is there anything revolutionary in these suggestions. The Discipline Committee under the Solicitors Acts, inheriting a jurisdiction that formerly resided in the High Court, has all these powers; so, it appears, have the medical and dental tribunals set up under Irish Free State legislation.² On the other hand, where such powers are given, the attendance of a judicial assessor should be obligatory.

In the matter of sentence we find no uniformity in the powers of professional tribunals. A voluntary association or limited or chartered company can, in general, either expel, suspend, or reprimand as it thinks fit, unless there is anything to the contrary in its rules or governing instrument. The Discipline Committee under the Solicitors Acts, owing to its power to award costs, can inflict what amounts to a moderate fine, without going to the length of striking the offender off the rolls, or even suspending him from practice; while the Royal College of Physicians of London have been explicitly empowered to fine.³ At the other extreme we find the General Medical Council, which can direct the erasure of a name from the medical register, but can inflict no other penalty.⁴

¹ There is a dictum to the effect that the Royal College of Physicians of London has power to put witnesses on oath; see F. Bullock, *The Law relating to Medical, Dental and Veterinary Practice* (1929), p. 77. There does not appear to be any objection to a professional tribunal requiring evidence to be submitted in the form of statutory declaration. At all events the G.M.C. requires every charge to be supported by statutory declaration before it will be entertained by the Penal Cases Committee. See *Standing Orders of the General Medical Council* (1925), chapter 14.

² See Bullock, *op. cit.*, pp. 202-4.

³ See the *Charter of the Royal College of Physicians of London*, 1518, and also 14 & 15 Hen. VIII, c. 5, and 1 Mary, sess. 2, c. 9. Under By-Law CLXXVII the amount of the fine is at present limited to £10.

⁴ 21 & 22 Vic., c. 90, s. 29.

In the course of time there has indeed been devised an ingenious method for circumventing this limitation. When the Council are of opinion that the conduct of a medical practitioner is deserving of censure, but not so grave as to warrant the erasure of his name from the register, it is their practice to state that they find certain allegations proved against him, but that they do not propose to proceed to judgement until the next or some subsequent session. The offender is thus in effect put upon his good behaviour. When the case comes on again he is required to produce testimonials to his character and conduct in the interval; and if these are satisfactory the case is dismissed.¹

A similar want of uniformity is found in the provisions governing the restoration of a name previously erased. In the unregistered professions, and in those registered professions, such as veterinary surgery, where a power to restore has been expressly given in the Act and the licensing authority and the tribunal are one and the same body, no problem arises. Application is made in accordance with the rules and standing orders, and the tribunal then decides in its discretion, which must, however, be exercised judicially as in the case of proceedings for erasure, whether to restore or not to restore. Where, on the other hand, the registration authority and tribunal are distinct from the licensing bodies, various complications have arisen. It may be inferred that in the medical profession, where the dual system was first introduced, the complications were not foreseen; at all events a chaotic situation has arisen. In the first place the G.M.C. is bound to register a name in respect of a registrable qualification conferred by a licensing body. But with the exception of nine universities and one medical corporation (the Society of Apothecaries), all the licensing bodies have power to withdraw their licence if they think fit.² Withdrawal by a university is very rare; while withdrawal by a medical corporation does not generally take place until after erasure from the register. Nevertheless, where it happens that a medical man has lost all his qualifications, the G.M.C. may proceed to erase his name without formal inquiry.³ In regard to restoration the Medical Act is silent; consequently there is no power to restore. But a

¹ Appendix V shows the proportion of cases dealt with in this fashion in certain years.

² The Society can withdraw its licence for a misdemeanour at any time; but it cannot do so for unprofessional conduct unless and until the G.M.C. has directed erasure from the register.

³ The power to erase without formal inquiry where there has been total loss of qualifications is not expressly given in the Medical Act. But it may be inferred, and the G.M.C. has assumed, that it was intended to be given; see 21 & 22 Vic., c. 90, s. 29.

power to register can be construed, and is in fact construed, as a power to re-register after erasure provided the requirements for initial registration are complied with. The result is that certain functions, which ought to be exercised by the G.M.C., may in fact be usurped by other bodies, inasmuch as in certain circumstances a licensing body can not only secure the erasure of a name from the register without full inquiry by the G.M.C., but can also, by taking away a licence and refusing to restore, prevent the Council from re-registering.¹

The absurdity of the position was amply demonstrated in the course of the re-registration proceedings brought by Dr. Axham. The Medical Council were much abused in the press at the time for the adoption of what was characterized as a bullying and temporizing attitude. But in fact they were powerless in the matter, owing to the action of the medical corporations from which Axham derived his original licence to practise. Axham had been a member of the Royal College of Surgeons of England and a licentiate of the Royal College of Physicians of Edinburgh. After his name was struck off the register in 1911 both these bodies withdrew from him their diploma. In 1925 he applied to the G.M.C. for the restoration of his name; but since he had no registrable qualification, the G.M.C. had no power under the Medical Acts to re-register him. Accordingly he applied to the Royal College of Surgeons of England for the restoration of his membership. The College declined to restore it him; but the Royal College of Physicians of Edinburgh, to whom he next applied, acceded to his request, and thus in January 1926 he became possessed of a registrable qualification. However, he did not again make application to the General Medical Council until March; and before the next ensuing meeting of the Executive Committee of the Council, before whom under the standing orders all applications for re-registration must go, his death had supervened.

¹ Perhaps the most curious situation is that which arises where a medical practitioner, whose only registrable qualification is the licentiateship of the Society of Apothecaries, is struck off the register and also from the roll of licentiates of the Society. The Society is forbidden to restore a licentiateship except 'with the consent in writing of the General Medical Council'; nevertheless until the licence is restored the Council cannot entertain an application for re-registration. It appears that in practice such cases are first considered informally by the Executive Committee of the G.M.C., which then reports to the Society that, if asked for, consent to the restoration of the licentiateship will be given. The Society then restores the licence, and finally the G.M.C. entertains a formal application for restoration to the register which goes through as matter of course. On this whole subject see an extremely clear exposition in F. Bullock, *The Law relating to Medical, Dental and Veterinary Practice* (1929), pp. 186 ff.

Under the Dentists Act there are fewer anomalies. Even where the licence has already been forfeited, a name cannot be erased except after full inquiry by the Dental Board and the G.M.C. in accordance with the procedure outlined above.¹ On the other hand, where the licence has not been already withdrawn, erasure involves its automatic forfeiture.² This provision seems hard to justify; but it does not affect restoration. Provided certain procedure is followed to bring the case before the same two bodies, a name can be restored to the register, although all licences have been forfeited.³ Indeed, restoration to the register involves automatic restoration of the licence. The mechanism of the Dentists Act is not entirely satisfactory; and since we look for an extension of the practice of separating the licensing authority from the registration and disciplinary authority, it is important that the respective parts they are to play in the scheme should be made clear. The judicial functions of erasure and restoration should always, we think, be a matter entirely for the tribunal; and where the licence is no more than a diploma of proficiency in a certain field of study, as is the case when it is granted by a university, there is no justification for making the possession of such a diploma dependent on the holder's position with respect to a professional register. But where, on the other hand, as in medicine and, should a register be set up, in accountancy, there are licensing authorities which are at the same time professional associations, the position is different, since the licence implies, not merely proficiency, but also admittance to membership of the association, and it is right that such associations should have power to exclude persons who have been judged guilty of professional misconduct; indeed it is arguable that they should have no option but to do so. It is also right, we think, that they should be at liberty to demand from their members the observance of a more austere ethical standard than is required by the statutory tribunal. With this object in view their own power to expel, independently of the tribunal,

¹ 41 & 42 Vic., c. 33, s. 13, as interpreted in *Ex parte Partridge* (1887), 19 Q.B.D. 467.

² 41 & 42 Vic., c. 33, s. 13. The section says: 'Any name erased from the register in pursuance of this section shall also be erased from the list of licentiates in dental surgery or dentistry of the medical authority of which such person is a licentiate.' At the time of the passing of the Act there were no degrees in dentistry at any English university. But degrees have since been instituted, and the holder of a degree has been given the right to be registered (11 & 12 Geo. V, c. 21, s. 11 (1)). Nevertheless the section quoted remains unamended, and the question of whether erasure from the register involves automatic forfeiture of a degree as well as of a licentiate'ship does not appear to have been tested in the courts.

³ 41 & 42 Vic., c. 33, s. 14.

should be left undisturbed; but in such manner that the expulsion of one of their members, though it involves the loss of his licence, should neither involve the erasure of his name from the register without due inquiry, nor stand in the way of its restoration.

PROFESSIONAL CONDUCT

Criminal Offences and Professional Ideals

WHEN we ask what are the ideals of conduct of which it is the aim of professional discipline to secure the enforcement, we discover the existence of certain positive rules, and we also discover that the commission of serious crime may be held to be incompatible with membership of a profession. But in considering either the rules or the professional attitude to criminal offences, with a view to an understanding of professional ideals, certain difficulties are met with. For instance, in the case of criminal offences it is found that, generally speaking, any felony or misdemeanour, however trivial, is enough to give the professional tribunal power to expel or strike off, but that in practice the power is not exercised save where the offence is grave, or where, though not intrinsically grave, it is committed in connexion with professional duties. The practice of the G.M.C. in dealing with convictions is described in the following terms:

‘The Council, by the direction of the Home Office, . . . receives from the police all over the Kingdom reports of convictions of medical practitioners for any offence whatsoever. Some of these are trivial, such for instance as having the number-plate of a motor-car unlighted, or exceeding the speed limit. In these cases the Council, as a rule, takes no action beyond recording the fact of the conviction. Other cases may be those of conviction for drunkenness, and, unless this conviction is for an offence committed when in attendance on a patient, or (say) when in charge of a motor-car, it is usual to issue a warning to the convicted practitioner. But should further convictions of the same sort be reported, the Committee¹ may think that they indicate a habit of intemperance which might be dangerous to the practitioner as a professional man and to the patients under his charge; in this case it might be decided that for the protection of the public the practitioner should be summoned to appear before the Council. There are other convictions of a still more serious nature, such as those of felony, in which, obviously, the Council ought forthwith to consider the matter

¹ The Penal Cases Committee of the Council, see above, p. 412.

in relation to the practitioner's professional status, and to the good repute of the Register.¹

In the dental profession these principles are given statutory embodiment. The Dentists Act lays it down that 'the name of a person shall not be erased . . . on account of a conviction for an offence which, though within the provisions of this section, does not, either from the trivial nature of the offence or from the circumstances under which it was committed, disqualify a person for practising dentistry'.² What, then, we are led to ask, is an offence which disqualifies a person for practising dentistry? In some professions conduct which is illegal without being criminal is condemned as unprofessional. Thus bankruptcy is regarded as so discreditable to a Chartered Accountant as to warrant disciplinary action by the Institute; while adultery, which is neither a felony nor a misdemeanour, has frequently been held by the G.M.C., when shown to have been committed with a patient or with the member of a patient's family, to be a breach of professional ethics sufficiently grave to justify the erasure of his name from the medical register.

Enough has been said to show that, though criminal or illegal acts may involve the loss of professional status, a mere consideration of the legal character of such acts will fail to throw light upon specifically professional ideals. When we approach the positive rules referred to above a somewhat similar difficulty is encountered; an essential unity of content tends to be obscured beneath differences of form and procedure. In certain professions, as we have seen, a number of 'Fundamental Rules' have been incorporated in the charter; in others the association itself has proceeded to draw up a 'Code of Professional Conduct'. More commonly the tribunal waits for complaints to be brought before it; and in that case the 'judge-made law', which is allowed to accumulate, may at some subsequent stage be codified in a series of rules. This course has been followed by the G.M.C., the Institute of Actuaries, the N.U.T., and other bodies. Elsewhere, as in the case of the Institute of Chartered Accountants and the four Inns of Court, the principles which have guided the tribunal have never been explicitly formulated. In certain registered professions, even though some form of code has been drawn up, we meet with a further difficulty owing to the concurrent jurisdiction of a statutory tribunal with power to strike off the register and an

¹ See a memorandum by the Registrar on the constitution, functions, and procedure of the Council, in the *Minutes of the General Medical Council* (1926), particularly pp. 262 and 263.

² 41 & 42 Vic., c. 33, s. 13.

association of practitioners with power to expel from membership. Thus in the medical profession it is not the practice of the G.M.C. to issue any ruling upon matters which have not come before it in concrete form. When any new complaint is made and is considered of sufficient gravity to warrant exclusion from the register, the first offender is discharged with a caution, and a 'Warning Notice' is issued, defining the nature of the offence, and stating that in the future any practitioner shown to have been guilty of the offence, as so defined, will be liable to have his name erased from the medical register. The British Medical Association, which does not occupy a position of the same responsibility, can proceed with less circumspection. It is the practice of the Association to publish 'Resolutions' setting forth the views of the Representative Body on medical conduct. These Resolutions cover a wider field, go into greater detail, and set a higher ethical standard than the Warning Notices of the G.M.C. To which, then, should we go to ascertain the ethics of the medical profession?

A distinction is sometimes drawn between 'Professional Ethics' and 'Professional Etiquette' which is intended to get over these difficulties. The former is used to denote rules enforced by exclusion from the register, and the latter rules enforced by some lesser sanction or by the mere pressure of opinion. But another distinction is also made between these terms, the former being used to mean rules which have been committed to writing, and the latter rules which the practitioner is left to interpret for himself. Their employment, therefore, though common in the professional world, is confusing and will be avoided in what follows. It is important to bear in mind that not all offences against the professional code are of equal or even comparable gravity, just as not all crimes, which are of equal seriousness in the eye of the law, are equally repugnant to professional ideas. But it is the principles underlying the several rules, rather than their gravity, that is of interest. Indeed, it is only in the light of their underlying principles that their true significance can be gauged.

Moreover, the purely juridical approach would give a false and one-sided view of professional ethical rules, which are the embodiment of ideals held independently of the sanctions for their enforcement. Indeed, historically, the ideals may be said to precede the sanctions. Many of the professions, as we have seen, were evolved, directly or indirectly, out of the Church, and they inherited from the Church the ideal of devotion to a calling. These professions reached their full stature and others began to make their appearance at a period when the conception of the 'gentleman'

was supreme, and from the 'gentlemen' with whom their members associated they derived other ideals which are no less a part of the professional code. Thus a 'gentleman' might be rich and might even seek riches. But certain roads to the acquisition of riches were closed to him; in particular he must not seek riches through the avenue of 'trade'. It is not within the scope of this work to consider the ideals of the priest and the gentleman. It is enough to remark that the observance among them of certain standards of conduct was largely secured by the mere pressure of opinion and tradition and without the aid of penal sanctions. In the case of the rules of professional conduct, which are largely an adaptation of the standards of the priest and the gentleman to the requirements of certain vocations in present-day life, the same is true. Indeed, when considered without reference to the manner of their enforcement, it is found that they can be grouped under some half-dozen headings according to the principle involved, and that in all professions the same broad classification holds good. Therefore the question put at the end of the last paragraph but one is misconceived, and it is perfectly proper to speak of 'Professional Ethics' or 'Professional Conduct', meaning thereby a single ideal of conduct, finding expression in a number of different rules, and enforced, it may be, by different sanctions, but based upon a few broad principles and observed throughout the professional world. It is that ideal of conduct that we have to analyse, and in terms not of methods of enforcement but of principles involved.

The Obligation to Serve

'When a man becomes a member of a profession, he undertakes an honourable calling. His duty is to serve the interests of the public. . . . He is not compelled by law to attend to any case to which he may have been called, but he must remember that, having accepted a public calling, he must as a rule have good reasons for his refusal.'¹ The obligation of the professional man to give his services whenever called upon, and without exercising capricious discrimination, for example on personal or political grounds, is very generally recognized; though in some professions it is made more explicit than in others. It is recognized in most unequivocal terms at the Bar, since the more unpopular the cause the greater the need for expert advice in its presentation. "The general rule is that a barrister is bound to accept any brief in the courts in which he professes to practise, at a proper professional fee

¹ Fred Bullock, *Handbook for Veterinary Surgeons* (1927), pp. 13 and 14.

dependent on the length and difficulty of the case. Special circumstances may justify his refusal to accept a particular brief.¹ Nevertheless, 'any complaint as to the propriety of such a refusal, if brought to the notice of the Council and by it considered reasonable, would be transmitted to the Benchers of the Inn of which the barrister is a member'.² In the medical profession the obligation to serve is not recognized except in an emergency. 'A private practitioner is not under any legal obligation to attend any patient to whom he may be called, though in an emergency or in the absence of any other available practitioner refusal to attend would be hard to justify.'³ In all ordinary circumstances doctors insist upon 'freedom of choice' on both sides. The reason is not far to seek. The relationship of doctor and patient requires from both parties to it, but particularly from the doctor, a degree of personal understanding, sympathy, and trust which is quite unknown in any other profession, and which could hardly be achieved except on a basis of freedom of choice on both sides.

Alongside the obligation to render service whenever called upon, there is generally recognized an obligation to give only the best service and to subordinate all personal considerations to the interests of the client. 'According to the best traditions of the Bar of England, a barrister should, whilst acting with all due courtesy to the tribunal before which he is appearing, fearlessly uphold the interests of his client without regard to any unpleasant consequences either to himself or to any other person.'⁴ The implications of this principle are numerous. If it is admitted that the interests of the client are paramount, then the practitioner becomes, as it were, a trustee, and his conduct must be guided by the principles of 'equity' in the widest sense of that term. We proceed therefore to consider the 'equitable' implications of this fiduciary relationship. Before doing so, however, we may pause to observe that persons convicted of the graver types of crime cannot possess the reliability of character that we should demand of a trustee; while even comparatively trivial offences, if committed in relation to the execution of a trust, become serious abuses. Other forms of conduct, though not criminal, may yet amount to a serious breach of a relation of trust, and adultery between a doctor and his patient, when thus regarded, is seen to be the legitimate object of the censure of the G.M.C.

¹ W. V. Ball and F. C. Watmough, *Annual Practice* (1932), p. 2514.

² *Ibid.*

³ B.M.A., *Handbook for Recently Qualified Medical Practitioners* (1926), pp. 18 and 19.

⁴ W. V. Ball and F. C. Watmough, *op. cit.*, p. 2511.

Professional Secrecy

The 'equitable' implications of the professional man's trusteeship, to which reference has just been made, fall into two main groups; those which relate to the financial terms of his contract, and those which spring from the confidences of which he is the repository. The latter are always the more difficult of interpretation, because they tend to give rise to a conflict of duties—a conflict, not between his duty to his client and his own self-interest, but between his duty to his client and his duty to third parties. For example, what is the correct course for a patent agent to take when two inventors come to him with the same invention? Assuming that his relation to them both is confidential, it is considered to be his duty to proceed with both applications, without informing either client of the existence of the other, until one of them has secured protection or decided to drop his application.

Barristers and solicitors are under a legal obligation not to disclose information which has been professionally confided to them; and this obligation is recognized in other professions also, though it has an ethical sanction only. The principle is the same in either case. The client cannot expect to be properly advised unless he is prepared to disclose all the facts; but such disclosure will not be made unless it is understood to be confidential. 'A medical practitioner should not under any circumstances disclose voluntarily, without the patient's consent, information which he has obtained from that patient in the exercise of his professional duties.'¹ Conflict arises when the public interest demands disclosure, and assumes perhaps its most acute form in the case of the doctor in the witness-box. As the law now stands, a barrister or solicitor is absolved from disclosing professional secrets in the witness-box, indeed he will be restrained from doing so. A doctor, on the other hand, can plead no privilege, and is bound to disclose all such relevant facts as may be known to him. The position is far from satisfactory to the medical profession, and the B.M.A. has recorded its opinion 'that the proper preservation of professional secrecy necessitates a measure of special consideration being recognized for medical witnesses in courts of law, above and beyond what is accorded to the ordinary witness'.² It does not fall to us to argue whether to concede such a principle would be to defeat the ends of justice.³ We can only quote the advice given

¹ B.M.A., *Annual Handbook* 1927-8, p. 196.

² *Ibid.*, p. 197.

³ In the case of a barrister or solicitor in the witness-box the question of defeating the ends of justice does not arise; for if they were not bound to secrecy their clients could not be sure of obtaining justice.

by the profession to its younger members suggesting the course they should follow so long as the law remains what it is.

'A refusal to obey the order of the judge in this connexion can only be justified in very exceptional circumstances, and as a general rule a medical witness would be well advised to obey the order of the judge. It must, of course, be realized that there may be circumstances in which a medical witness would be acting in accordance with the highest principles of medical ethics by refusing to obey the judge and taking the consequences, but this serious step should only be taken after consultation with those who are competent to advise.'¹

The same dilemma faces the professional man who has reason to suspect his client of criminal intentions. Thus it may become evident to a Chartered Accountant with an income-tax practice that one of his clients is endeavouring to defraud the revenue; but this would not generally be held to justify his turning informer. On the other hand, he should certainly throw up the appointment.² The medical attitude to this problem is defined in the following terms:

'It has been urged from time to time that doctors should volunteer information which would lead to the discovery of a crime, such as the procuring of abortion. Any such suggestion should be strenuously resisted, in the belief that nothing should be done to prevent any one who is ill from consulting a doctor in the fullest confidence that his secret, even if it be that he has been concerned in the commission of a crime, will not be reported to the authorities.'³

Thus the doctor, like the Chartered Accountant, must not turn informer; but, unlike the Chartered Accountant, he is not under an obligation to refuse his services.

The barrister is frequently faced with particularly difficult conflicts of this kind. If an advocate is aware of a decided case strongly supporting his opponent's contentions, which the latter has failed to bring to the notice of the court, is he justified in passing it over in silence? It is believed that different answers would be given to this question by different members of the profession. An analogous problem, which seems to have a peculiar fascination for the layman, has been made the subject of an official pronouncement.⁴ It concerns the duty of a barrister who is defending on a plea of 'not guilty' a prisoner who has confessed to

¹ B.M.A., *Handbook for Recently Qualified Medical Practitioners* (1926), p. 40.

² See *The Etiquette of the Accountancy Profession*, by a Chartered Accountant (1927), pp. 61 ff.

³ B.M.A., *Handbook for Recently Qualified Medical Practitioners* (1926), p. 39. Of course, where the person suspected is not a patient these considerations do not apply.

⁴ See General Council of the Bar, *Annual Statement* (1915), pp. 14 ff.

counsel himself that he did commit the crime of which he stands accused.

'If the confession has been made before the proceedings have been commenced, it is most undesirable that an advocate to whom confession has been made should undertake the defence, as he would most certainly be seriously embarrassed in the conduct of the case, and no harm can be done to the accused by requesting him to retain another advocate.

'Other considerations apply in cases in which the confession has been made during the proceedings, or in such circumstances that the advocate retained for the defence cannot retire from the case without seriously compromising the position of the accused.

'In considering the duty of an advocate retained to defend a person charged with an offence who in the circumstances mentioned in the last preceding paragraph confesses to counsel that he did commit the offence charged, it is essential to bear the following points clearly in mind: (1) that every punishable crime is a breach of the common or statute law [when] committed by a person of sound mind and understanding; (2) that the issue in a criminal trial is always whether the accused is guilty of the offence charged, never whether he is innocent; (3) that the affirmative rests on the prosecution. Upon the clear appreciation of these points depends broadly the true conception of the duty of the advocate for the accused.

'His duty is to protect his client as far as possible from being convicted except by a competent tribunal and upon legal evidence sufficient to support a conviction for the offence with which he is charged.

'The ways in which this duty can be successfully performed with regard to the facts of a case are (*a*) by showing that the accused was irresponsible at the time of the commission of the offence charged by reason of insanity or want of criminal capacity, or (*b*) by satisfying the tribunal that the evidence for the prosecution is unworthy of credence, or, even if believed, is insufficient to justify a conviction for the offence charged, or (*c*) by setting up in answer an affirmative case.

'If the duty of the advocate is correctly stated above, it follows that the mere fact that a person charged with a crime has in the circumstances above mentioned made such a confession to his counsel, is no bar to that advocate appearing or continuing to appear in his defence, nor indeed does such a confession release the advocate from his imperative duty to do all he honourably can do for his client.

'But such a confession imposes very strict limitations on the conduct of the defence. An advocate "may not assert that which he knows to be a lie. He may not connive at, much less attempt to substantiate, a fraud".

'While, therefore, it would be right to take any objection to the competency of the Court, to the form of the indictment, to the admissibility of any evidence, or to the sufficiency of the evidence admitted, it would be absolutely wrong to suggest that some other person had committed the offence charged, or to call any evidence, which he must

know to be false having regard to the confession, such, for instance, as evidence in support of an alibi, which is intended to show that the accused could not have done or in fact had not done the act; that is to say, an advocate must not (whether by calling the accused or otherwise) set up an affirmative case inconsistent with the confession made to him.

'A more difficult question is within what limits, in the case supposed, may an advocate attack the evidence for the prosecution either by cross-examination or in his speech to the tribunal charged with the decision of the facts. No clearer rule can be laid down than this, that he is entitled to test the evidence given by each individual witness, and to argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged. Further than this he ought not to go.

'It must be clearly understood that this report is not intended as anything more than an answer to the specific question submitted. It is based on the assumption that the accused has made a clear confession that he did "commit the offence charged", and does not profess to deal with the very difficult questions which may present themselves to counsel when a series of inconsistent statements are made to him by the accused before and during the proceedings. . . . They can only be answered after careful consideration of the actual circumstance of the particular case.'

Indirect Remuneration

The fiduciary relationship between professional and client involves certain restrictions on the professional man's methods of charging. It requires that the practitioner shall be financially disinterested in the advice he gives, or, at least, that the possibility of conflict between duty and self-interest shall be reduced to a minimum. With this object in view attempts have been made to render the financial terms of the contract open and above-board, so that the client may know how much he is paying, what he is paying it for, and whom he is paying it to.

In the architectural profession this matter is deemed of sufficient importance to be placed in the forefront of the R.I.B.A. code. 'An Architect is remunerated solely by his professional fees and is debarred from any other source of remuneration in connexion with the works and duties entrusted to him.'¹ It is given the same prominence in the code of the Civil Engineers: 'Every Corporate Member of the Institution shall . . . act in all professional matters strictly in a fiduciary manner with regard to any Clients whom he may advise, and his charges to such Clients shall constitute his only remuneration in connexion with such work.'² The forms of

¹ See R.I.B.A.: *Kalendar*, 1931-2, p. 107.

² See Appendix IV.

indirect remuneration that are generally prohibited include the giving and receiving of commissions for the introduction of business, profit-sharing with consultants, with members of other professions, and with contractors, and the taking out of patents or acquisition of any financial interest in any materials or appliances recommended to clients. Some professions look with disapproval upon other practices less directly associated with professional work.

The giving and receiving of commissions are universally prohibited. For example, 'any barrister who gave any commission or present to any one introducing business to him would be guilty of most unprofessional conduct, which would, if detected, imperil his position as a barrister';¹ while surveyors are forbidden by a 'fundamental rule' of their Institution to 'accept or give' any discount or commission in connexion with any professional work.² The prohibition upon profit-sharing with consultants follows logically from the prohibition on the giving and receiving of commissions; there results something very like a fraud if a general practitioner recommends his client to see a certain consultant, and the recommendation is based on any other ground than the ability and reputation of the consultant. 'Dichotomy,' says the British Medical Association, 'or the practice whereby the practitioner recommending a patient to a consultant shares the fee or fees with the latter, or where the consultant pays the practitioner a percentage of the fees received by him, cannot be too strongly condemned.'³ It frequently happens that the members of two distinct professions co-operate in the rendering of a service so that one plays relatively to the other virtually the role of consultant. Here the same principle applies. Thus profit-sharing with solicitors is 'incompatible with the discipline of the Bar';⁴ while a Chartered Accountant is forbidden to allow a solicitor to participate in the profits of his business, and to accept any part of the professional profits of a solicitor's business. Similarly the professional associations of auctioneers and surveyors forbid profit-sharing with accountants.

Profit-sharing with contractors may be regarded as a special case of profit-sharing with consultants; but it would perhaps be more accurate to think of it as a special case of interest in materials. The architect, or the consulting engineer, may be conceived of as one whose duty it is to give advice to a client in regard to the purchase of a commodity which he, the architect or engineer, does

¹ W. V. Ball and F. C. Watmough, *op. cit.*, p. 2510.

² By-law 24 of Chartered Surveyors' Institution.

³ *Handbook for Recently Qualified Medical Practitioners* (1926), p. 18.

⁴ W. V. Ball and F. C. Watmough, *op. cit.*, p. 2511.

not himself supply. The commodity is supplied by a contractor. If the advice given is to be disinterested, the architect or engineer, as the case may be, must have no financial inducement to recommend the purchase of one type of commodity rather than another. Consequently he must not be interested in the materials supplied; nor must he participate in the profits of the contractor, which may themselves depend upon those materials. Therefore it is laid down that 'an Architect must not accept . . . any discount, gift or commission from contractors or tradesmen, whether employed upon his works or not';¹ while, 'if an Architect own, or have any commercial interest in, any material, device, or invention used in building, he must inform his client thereof'.² Again, a civil engineer must not, 'while acting in a professional capacity, be at the same time, without disclosing the fact in writing to his Clients, a Director or member of, or a Shareholder in, or Agent for, any contracting or manufacturing company firm or business with which he may have occasion to deal on behalf of his Clients, or have any financial interest in such a business'.³ The Treasury makes a similar rule in regard to civil servants and government contracts; no government contract is to be let to a government servant in the contracting department, or to a partnership of which he is a member, or to a company of which he is a director, unless he has made full disclosure of his interest to the head of the department, and the head of the department has given permission for the contract to proceed.⁴ The problem is seen in its most acute form in the estate agency profession, where the opening of estate agency departments by multiple shops is becoming increasingly common. The principal association has made a ruling, though at the cost of precipitating a split in the profession, that 'no member shall establish or join either as principal or assistant any commercial firm, or undertaking, for the purpose of carrying on or assisting to carry on professional business as an adjunct to or in connexion with the commercial business of such firm'.⁵ In the opinion of the British Medical Association 'it is undesirable that medical practitioners should have a proprietary interest in preparations which it may be their duty to recommend to their patients'.⁶ It is clearly but a short step from 'preparations' to nursing-homes. The B.M.A. does not absolutely prohibit its members from

¹ R.I.B.A., *Kalendar*, 1931-2, p. 107. ² Ibid. ³ See Appendix IV.

⁴ Treasury Circular (No. 12/24), dated 27th May 1924, quoted *Report of the Board of Enquiry appointed by the Prime Minister to investigate certain Statements affecting Civil Servants* (1928, Cmd. 3037), p. 25.

⁵ Art. 92 (2) of Articles of Association of Auctioneers' and Estate Agents' Institute.

⁶ B.M.A., *Annual Handbook* 1927-8, p. 145.

acquiring any interest in nursing-homes; but it is laid down that 'if a medical practitioner has a financial interest, involving his possible pecuniary gain, in any institution to which he refers a patient, it is desirable that he should disclose this fact to his patient'.¹ The Royal College of Physicians takes a stronger line and states that 'it is undesirable that any Fellow or Member of the College should have any financial interest (whether direct or indirect) in any Company or Institution having for its object the treatment of disease for profit'.²

Among the practices forbidden by the Chartered Institute of Patent Agents is 'the ownership by a Member of any invention, patent or interest therein in such circumstances as to give rise to a conflict between professional duty and interest'.³ In the patent agency profession it is natural that there should be a strong ethical objection to the taking out of patents, since, if an idea which might be the subject of a patent occurs to a patent agent as a result of work that he has been engaged upon for a client, the property in the idea may be regarded as belonging in strictness to the client, who should therefore, it is thought, be given the opportunity of incorporating it in his own application. Even if such an idea occurs to a patent agent independently of professional business, it is the opinion that he should communicate it to a learned society or technical journal, 'for he never knows when a conflict between his own interest and his duty to a client may arise'.⁴ In other professions the taking out of a patent does not always raise the possibility of a conflict of interest. When it does so it is prohibited. When it does not do so the professional attitude depends upon the nature of the invention. If the invention has no relation to a vital matter, as in engineering and chemistry, no objection is raised to the taking out of a patent by a professional man. If he did not do so, some one else would. It may be that by the standards of the highest ethics there should be no patenting and all inventions should be freely at the disposal of the public; but this is not the general view, and in the absence of special circumstances, the professional man agrees with the man in the street. Where the invention relates to a vital matter, however, the professional view is that there should be no patenting. In 1927 it came to the

¹ Ibid., p. 180.

² Resolution of the College published in *The Charter and Bye-laws of the Royal College of Physicians of London* (1927), pp. 45 and 46. It will be observed that the resolution does not apply to licentiates.

³ By-law 13 of the Chartered Institute.

⁴ *Transactions of the Chartered Institute of Patent Agents*, vol. xxxviii (1919-20), p. 32.

knowledge of the *British Medical Journal* that a doctor and his wife were taking out a patent covering the results of research into the prevention and treatment of scarlet fever. Their reason for taking this step may have been the fear that, if they did not act, some one else would do so. But in the opinion of the *British Medical Journal*¹ the step was 'so unusual in medical science' that it called for comment; and they proceeded to give what they considered to be 'the opinion of the medical profession upon the general question'. It is not suggested that it would give rise to a conflict of interest between practitioner and patient. Nevertheless the precedent is viewed with alarm and misgiving. If once the practice got started, research workers would have to take out patents for their own protection, since, otherwise, trifling modifications of published methods would be used against them. But the chief objection is purely ethical. It involves a commercializing of research; and in the general opinion of research workers, 'to restrain by any means the free currency of such a discovery, to hinder in the smallest degree the application of it in helping to lift the burden of human suffering, or in the promotion of further research, would be impossible to them; to ask money for it would be revolting in the extreme. They [the research workers] have in fact their full and sufficient reward'.²

It is clear that we have here the expression of an ideal which passes beyond the mere prohibition of specific forms of indirect remuneration such as might result in a conflict between interest and duty. The whole commercial attitude is condemned. Something of the same sort is discernible in the ethics of other professions. We draw attention elsewhere to the strong feeling which exists against the turning of professional practices into limited companies.³ This feeling does not extend to partnerships, because the partnership does not facilitate in the same way the divorce of financial interest from professional responsibility, and the advantages are held to outweigh the disadvantages. Nevertheless, to barristers and fellows of the Royal College of Physicians, whose skill is peculiarly personal, even partnership is forbidden.⁴ The members of certain professions, particularly accountants and actuaries, are unusually favourably placed, from the inside information they necessarily acquire, for speculating in stocks and shares. The buying and selling of securities is not explicitly con-

¹ *British Medical Journal* (1927), vol. i, pp. 479 and 480.

² *British Medical Journal*, loc. cit.

³ A Chartered Patent Agent is expressly forbidden to conduct a professional practice through the medium of a limited company; see By-law 13 of the Institute.

⁴ See below, p. 446.

demned; in fact it certainly takes place; but there is evidence of a feeling against it in both these professions.¹ Much the same is true of architects and surveyors in regard to speculation in site values. Dealing in land is undoubtedly practised; but the better opinion views it with disfavour. Indeed the R.I.B.A. lays it down that 'an Architect must not accept an appointment in any commercial firm in which the extent of his remuneration is affected by the profits of the firm'.² In the Royal College of Physicians the objection to commercial activity finds its most extreme expression. 'No Fellow of the College shall be engaged in trade.'³

If a professional man were asked to explain the grounds of this objection to commercial activity, it is not unlikely that he would be unable to formulate them with any definiteness. At bottom they would appear to be the same as those which render it improper for a civil servant to speculate in foreign currency. No one engages in commerce who does not expect to make a profit out of fluctuations in prices, and the mental attitude associated with speculative profit-seeking is felt to be incompatible with single-minded devotion to a professional calling. In the report on what became known as the 'Francs Case' it was stated that 'there are spheres of activity legitimately open to the ordinary citizen in which the Civil Servant can play no part'.⁴ In particular,

'his position clearly imposes upon him restrictions in matters of commerce and business from which the ordinary citizen is free. Between the regular investment or management of a private fortune on the one hand, and speculative transactions in stocks, exchange or commodities on the other, there are obviously numerous gradations, and it may often be difficult to draw the precise line of demarcation between what is lawful and what is prohibited; it may even be inadvisable to make the attempt, because many things, though lawful, may yet be inexpedient. But some transactions fall indubitably on one side of the line rather than upon the other. It might well be desirable for a Civil Servant in all circumstances to avoid transactions wholly speculative in character; but where he is employed in any Department to which, whether rightly or wrongly, the public attribute the power of obtaining special information, such as the future course of political or financial events likely to affect the rise and fall of markets, then we assert unhesitatingly that participation in such transactions is not only undesirable or inexpedient, but wrong.'⁵

¹ See *The Etiquette of the Accountancy Profession*, by a Chartered Accountant, pp. 50 ff., and the remarkable opinion expressed in the *Journal of the Institute of Actuaries*, vol. lix (1928), p. 6.

² R.I.B.A., *Kalendar*, 1931-2, p. 108.

³ By-law CLXV.

⁴ *Report of the Board of Inquiry appointed by the Prime Minister to investigate certain Statements affecting Civil Servants* (1928, Cmd. 3037), p. 21.

⁵ *Ibid.*, p. 22.

Price-cutting and Advertisement

A professional man, as we have seen, is expected to observe certain obligations which arise out of the trust reposed in him. Specific forms of indirect remuneration are forbidden because they might lead to a conflict between duty and self-interest, while commercial activities outside his own profession, though not actually banned, are looked upon with disapproval. When the position of trust is regarded as extending to a profession as a whole, it is seen that certain common commercial practices are incompatible with the rendering of professional services; and from these practices the professional man is required to abstain. In particular professional men may only compete with one another in reputation for ability, which implies that advertisement, price-cutting, and other methods familiar to the business world are ruled out.

Thus 'an Architect must not . . . compete with another Architect by means of a reduction of fees or by other inducement'.¹ Tendering may be regarded as a form of price-cutting; and therefore, when a local authority advertised for fellows of the Institute of Actuaries to submit tenders for making an actuarial report on a proposed pension scheme under the Local Government Officers Superannuation Act, the council gave it as their opinion that it would be improper for members to answer such an advertisement.² The B.M.A. rules that 'no medical practitioner should tender for any public appointment unless the salary is stated',³ and the *British Medical Journal* refuses to accept advertisements in which they are asked to do so. The secretary of the R.C.V.S. has expressed the general professional attitude in the following terms:⁴ 'The practice of certain public bodies in advertising veterinary appointments as "open to tender" is opposed to the interests of the public and is derogatory to the profession. . . . It is in the public interest that the person appointed to a public duty should be the most suitable man for the post, and not he who is willing to give his services for the lowest salary.'⁵ But if price-cutting and tendering are open to objection, so equally is advertisement.

In business advertisement is regarded as a perfectly legitimate competitive weapon; its use is widespread and increasing, and there is no objection to it on ethical grounds. In the great majority

¹ See R.I.B.A.: *Kalendar* 1931-2, p. 107.

² *Journal of the Institute of Actuaries*, vol. liv (1923), p. 121.

³ B.M.A., *Handbook for Recently Qualified Medical Practitioners* (1926), p. 12.

⁴ F. Bullock, *Handbook for Veterinary Surgeons* (1927), pp. 27 and 28.

⁵ While the arguments here advanced are an ample justification for prohibiting price-cutting and tendering, it should not be forgotten that the prohibition may also greatly assist a profession in securing conformity to an economic policy.

of the professions, on the other hand, it is strongly condemned. The condemnation has reference, not to specific acts, but to the circumstances in which they are performed; and 'there are many things innocent in themselves', states the B.M.A., 'which, by the manner and frequency of their doing, gravely contravene the principle that professional men should not advertise'.¹ The refinements of this offence have been more fully worked out in the medical profession than elsewhere; and advertisement is declared to be objectionable only when it is employed by a practitioner 'for the purpose of obtaining patients or promoting his own professional advantage'.² Thus 'publicity is rightly allowed to medical men not in actual practice of their profession'.³ Again the insertion of a name in a directory is perfectly legitimate so long as no charge is made and specially prominent type is not used.⁴ But though nothing is interpreted as advertisement which is not done to secure competitive advantage in attracting clients, anything which is done with that object, however little resemblance it may bear to deliberate publicity, is condemned as unprofessional. Thus 'canvassing or employing any agent as canvasser'⁵ obviously comes within the definition; but so, less obviously, does 'being associated with or employed by those who sanction' advertisement or canvassing.⁶ Thus interpreted, the rule forbids a doctor to work for a medical-aid institution which canvasses for patients, and the fact that such institutions were so largely in the habit of attracting patients in this way was one of the grievances which precipitated the 'battle of the clubs'. Furthermore, 'members of the B.M.A. should refuse . . . to express any opinion as to the merits of proprietary articles, unless under a guarantee enforceable at law that their statements will not be published for purposes of advertisement'.⁷ So, too, the publicity which inevitably attends the business of auctioneering has led both the Land Agents' Society and the R.I.B.A. to prohibit their members from practising as auctioneers.

For the same reasons the Royal College of Physicians has ruled that 'it is undesirable that any Fellow, Member or Licentiate of the College should contribute articles on professional subjects to journals professing to supply medical knowledge to the general public'.⁸

¹ *British Medical Journal (Supplement)* (1925), vol. i, p. 164.

² Warning Notice no. 6 of the G.M.C.; see Appendix IV.

³ See *British Medical Journal (Supplement)* (1925), vol. i, p. 164.

⁴ See Fred Bullock, *Handbook for Veterinary Surgeons* (1927), pp. 17 and 18.

⁵ Warning Notice no. 6 of the G.M.C.; see Appendix IV.

⁶ *Ibid.*; see Appendix IV.

⁷ B.M.A., *Annual Handbook 1927-8*, pp. 145 and 146.

⁸ Resolution of the College published in *The Charter and Bye-laws of the Royal College of Physicians of London* (1927), p. 45.

This represents an extreme view; but the problem of discussions and articles in the public press has everywhere given rise to difficulties. The Bar Council states that 'there is no objection to a barrister writing articles on legal subjects of a popular nature for publication in a daily newspaper over his name with the addition of "barrister-at-law"'.¹ On the other hand, if he takes charge of a column where answers are given to inquiries by correspondents, a stricter rule applies, and his name must not be 'directly or indirectly disclosed or liable to be disclosed'.² The British Medical Association did not find it easy to arrive at an agreed policy on this matter, but eventually a statement was issued in the following terms:

'From time to time there are discussed in the lay papers topics which have relation both to medical science and policy and to the health and welfare of the public, and it may be legitimate or even advisable that medical practitioners who can speak with authority on the question at issue should contribute to such discussions. But practitioners who take this action ought to make it a condition of publication that laudatory editorial comments or headlines relating either to the contributor's professional status or experience shall not be permitted; that his address or photograph shall not be published; and that there shall be no unnecessary display of his medical qualifications and appointments. There is a special claim that practitioners of established position and authority shall observe these conditions for their example must necessarily influence the action of their less recognized colleagues. Discussions in the lay press on disputed points of pathology or treatment should be avoided by practitioners; such issues find their appropriate opportunity in the professional societies and the medical journals.'³

The attention commanded by certain prominent medical publicists is sufficient indication that some provision of this kind is necessary in the interests of the public. There can be little doubt that if practising medical men were permitted the latitude 'rightly allowed'⁴ to Sir Arbuthnot Lane, the publicity which would attach to their names would bring to some of them an extensive practice not necessarily related to their skill and proficiency in diagnosis and treatment. But this is only one side of the picture. It can be contended with some show of reason that the severity of the present restrictions prevents the public from acquiring up-to-date knowledge of the practice of health and hygiene. An unsigned article, or even a signed article where the signature gives no indication of the writer's professional standing, carries very little weight with the public; while the few medical men whose names are

¹ W. V. Ball and F. C. Watmough, *op. cit.*, p. 2515.

² *Ibid.*

³ *British Medical Journal (Supplement)* (1925), vol. i, p. 164.

⁴ See p. 433.

familiar display for the most part a particular unwillingness to allow their names to be used for purposes of publicity. It would seem to be the most satisfactory solution, from the point of view both of the profession and of the public, if some representative organ of the profession, a committee of the British Medical Association, for instance, were to undertake responsibility for the education of the public in matters of health and hygiene, so far as the medical profession can contribute to it. The Association would command all the necessary attention; and with its already extensive activities in the direction of study and research it has the facilities required. That the need for such a departure is recognized in some quarters is evident from certain proposals, endorsed by the Association in 1927, 'for action by the Divisions and Branches in assisting in the education of the public in health matters'; but so far as is known, little has yet been done.¹

When, however, it is a matter not of prevention but of cure, the position is very different. It is not desirable that members of the public should be led to practise diagnosis upon themselves or others, or to apply remedies. Yet this is likely to be the effect of discussing symptoms and methods of treatment in the lay press. On the other hand, the public are already eager to submit to every new cure, and though they are entirely unable to test the evidence in support of them, knowledge of experimental methods of treatment cannot be kept from them. The remedy, however, does not lie in attempting the impossible, namely, to make every man his own doctor, but in educating the public to understand that, while they may learn to keep themselves healthy, they should have recourse to professional advice when they are sick. Therefore the B.M.A., or whatever authority may be responsible for the health education of the public, should endeavour to press this advice on all occasions.

The prohibition on advertisement is not completely coextensive with the field surveyed in the first part of this work. Pharmacists, opticians, surveyors, auctioneers, estate agents, and patent agents all advertise to a greater or less extent. The case of the pharmacist calls for no special comment. He is a shopkeeper and he observes

¹ See B.M.A., *Annual Handbook 1927-8*, p. 154. The arguments here advanced apply in differing degrees to other professions. The Dental Board already undertakes a certain amount of publicity in the interests of public health; but it appears to hold the view that this object will be better promoted by a process of suggestion than by encouraging the public to think for themselves on matters of dental hygiene. Public lectures have also been held from time to time under the auspices of the R.I.B.A. and certain provincial associations of architects, with the object of stimulating interest in architecture among the public and among builders and workmen.

the customs of shopkeepers. His calling has been made the subject of state regulation in the interests of public safety and to ensure that he is competent to dispense any medicine in accordance with the prescription given him. Whether it is desirable that the public should be induced to buy perfume or face-powder, or any other article of which they would not have felt the need had it not been suggested to them, is a general point which it does not fall to us to argue. That they should be persuaded to buy quack remedies when they are in need of medical attention is an abuse which calls for more drastic measures than merely prohibiting advertisement by drug-store proprietors. The same is true of opticians. Merely to forbid them to advertise would not prevent members of the public from coming to them for spectacles when they ought to be under qualified ophthalmic treatment.

Surveyors, auctioneers, and estate agents are a different case. They are not shopkeepers but brokers; and it is part of their duty to find purchasers for property which they have been commissioned to offer. The nature of the property for which they act as intermediaries is such that some advertisement is unavoidable. Where a broker operates in a private market, and where the property dealt in is of such a kind that it is a matter of indifference to the purchaser which particular lot or parcel he acquires, there is little need for advertisement; and advertisement, and the circularization of any but his own clients, are in fact forbidden to members of the London Stock Exchange. The real property broker, on the other hand, is compelled to advertise in the interests of his client, since no two parcels of land or house property enjoy precisely similar advantages in the eye of a prospective purchaser. These arguments cannot, however, do more than justify the announcement by him of specific properties. They cannot be held to warrant blatant touting or the merely laudatory puff; and in fact these would certainly be frowned upon. It is possible that the professional associations in this field do not go so far as they might; but the following statement indicates that they are anxious to raise standards. 'While the Council recognize that, under modern conditions, the seeking of instructions, whether in the public press, by circular, by personal letter, or other similar means, cannot be precluded, they desire to remind members of the necessity for minimizing as far as possible the incompatibility of such methods with the generally accepted standards of professional practice.'¹

¹ Quoted from a letter circulated to members of the Auctioneers' and Estate Agents' Institute in 1925.

Patent agents, who also advertise to some extent, are neither shopkeepers nor brokers;¹ but it is claimed that their numbers are so small that in the absence of advertisement inventors would be unable to find out whom to consult. If this is so it must raise serious doubts whether the prohibition on advertisement may not, in certain cases at least, defeat its own purpose by actually making it more instead of less difficult for the public to get the best service and for the individual client to find the best man for a given job. It would appear that in the business world advertisement is intended to serve two main purposes. The first is informative; the advertisement is directed towards those who have already decided to make purchases, and it sets out to inform them where their wants can be supplied. More recently, however, it has been directed preponderantly towards a second purpose, namely, the deliberate creation of wants previously unmet. Now in so far as there is need in the professional world for the deliberate stimulation of demand, for example in dentistry, this is a matter which should be dealt with by each profession in its corporate capacity, if necessary by collective publicity. So far as the problem is one of clients who are in want of advice but who do not know where to apply for it, there are really four distinct cases to be considered. There is the case just referred to of the very small profession. There are the cases where the client is in search of a practitioner with qualifications in a special branch of the technique, or of the practitioner who, without necessarily possessing special qualifications, has some special ability and skill. Finally, there is the case of those professions, whether registered or unregistered, where the recognized practitioners have to compete with numerous 'outsiders' with unrestricted facilities for touting, canvassing, and circularizing.

We may take the third case first. It is primarily to aid in the selection of the practitioner of special ability and skill that advertisement is prohibited. It may be admitted that prohibition makes no positive contribution to this end. Nevertheless negatively it does assist towards it by removing an agency which may not always impede the emergence of talent, but which certainly does nothing to facilitate it. Moreover, reputations, when once made, are passed round with fair rapidity, and it is almost always possible, by means of careful inquiry, to discover the sort of estimation in which a doctor, dentist, or solicitor is generally held. There is no

¹ They do to some extent act as brokers of patent rights, and the Chartered Institute permits advertisement of such rights 'upon the bona fide instructions of a client as regards a particular patent or patents'. See *Transactions of the Chartered Institute of Patent Agents*, vol. xlii (1923-4), p. 13.

reason to suppose that the estimate so formed by public opinion will be less accurate than that which the prospective client would form from advertisements in the public press and elsewhere. The problem of the small profession could probably be met by collective advertising. Should this not be sufficient, controlled individual advertising might be permitted, as in the Chartered Institute of Patent Agents, where the size and character of the advertisements is limited so as to render it practically impossible for one practitioner to gain a competitive advantage over another by a more lavish expenditure of money. The case of the practitioner with special qualifications in one branch of the technique is similar to that of the practitioner with special ability and skill, in so far as it is a problem at all; but 'the usual and proper procedure is that the patient goes to the specialist on the recommendation of his ordinary medical attendant and therefore there is no need for any announcement of the specialty on the door-plate'.¹ The general case for the 'family doctor' has been discussed elsewhere.² If it holds good, then so does the case for prohibiting the specialist from advertising his speciality.

The fourth and last case is that of the profession where there is acute competition between 'insiders' and 'outsiders'. Disclosures relating to the affairs of a well-known firm of outside stockbrokers have lately given this question considerable prominence; and it is one which admits of no entirely satisfactory solution. Collective advertisement by the association of the fact that its individual members are forbidden to advertise may be of some help. It is the method employed by the Stock Exchange; but it is one which cannot go to the root of the problem, since the least well-informed sections of the public, who constitute the most promising field for the touter and the canvasser, are the least accessible to the only type of publicity open to a professional association, which clearly cannot circularize individual members of the public. To permit individual advertising, except under stringent control, would be a retrograde step, rendering any ultimate advance in professional standards impossible. Yet so long as there is substantial control, it will always remain open to the 'outsider' to go one better. In the accountancy profession registration, if wisely planned, might be of help. Elsewhere it can only be left to the association to do what it can to popularize the title of its members, and to await such an advance in educational standards as will render the public less amenable to this type of suggestion.

¹ B.M.A., *Annual Handbook* 1927-8, p. 144.

² And for the 'general practitioner of the law'.

There are unfortunately methods more subtle than advertisement whereby one practitioner may seek to supplant another. These methods are condemned by professional men in no less ambiguous terms; but their condemnation in certain instances affords matter for considerable misgiving. The danger here lies in too strict an observance of the letter, without an understanding of the spirit, of the rules. It is primarily to secure unfettered freedom of choice to the client that limitations are imposed upon freedom of competition between practitioners; but there may be serious doubts whether the effect, if not the intention, of the limitations now to be considered is not rather to put obstacles in the way of the client's freedom.

The rules are directed principally against any attempt by one practitioner to ingratiate himself with the clients of another. Thus, 'if a practitioner is asked to visit a patient who is already under medical care he should decline, except in consultation with the attending practitioner.'¹ So, too, a *locum tenens* 'must not do anything either by look, word or deed which would reflect or tend to reflect discredit upon his principal'.² Again, 'not infrequently a practitioner is asked . . . to express an opinion on a diagnosis or scheme of treatment alleged to be adopted by another practitioner in a case in which the inquirer has a personal interest. The invitation should always be courteously, but firmly declined. It can never be safe to dogmatize on such points, and only the practitioner in charge of the case can have the fullness of information on which to base a reliable opinion.'³ It may be observed that dislike of criticism in front of the layman of the work of another practitioner has led to attempts to prohibit any public criticism of the work of living architects by their fellow professionals, though, fortunately, the attempts were not successful. It would be disastrous if the public were allowed to hear no expert criticism of modern architecture; nor is it in any way impossible for the critic to undertake such criticism without either blowing his own trumpet or casting personal disparagement on the author of the work criticized. In the medical profession caution might be necessary; but at present the public are so ill-informed that public criticism of the work of medical men cannot be carried very far. The complaint against the doctors is a different one, namely, that needless difficulties are put in the way of the patient who is anxious to change his medical adviser.

There can be no question but that these difficulties exist. The

¹ B.M.A., *Handbook for Recently Qualified Medical Practitioners* (1926), p. 26.

² *Ibid.*, p. 27.

³ *Ibid.*, pp. 25 and 26.

question is whether they are desirable or undesirable, and if the latter, whether they are inevitable or are due to a narrow interpretation of the rules of medical ethics. We start from the assumption that in the medical profession, more than any other, freedom of choice is essential; in a relationship so intimate any other system would be intolerable. But the very intimacy of the relationship places obstacles in the way of its severance. In the case of private patients the sense of awkwardness is increased because doctor and patient meet on a footing of social equality and probably also of social acquaintanceship. But under the stress of illness the nervous or excitable patient is only too prone to put the blame on the doctor, and while he is in this frame of mind nothing would be easier than for a rival practitioner to steal his confidence. Moreover, the patient who complains generally wants to have it both ways. He does not, to begin with at all events, want to throw over his regular attendant; but he wants to obtain a second opinion on the sly. So far, therefore, the difficulties are either inevitable or desirable; and if they extended no farther, they would be unexceptionable. In theory they do not extend farther; since the patient is always entitled to have a second opinion if he wants one. 'In the interests alike of the public and of the medical profession, it is the duty of a medical practitioner to accept the opportunity of consultation, especially upon obscure and difficult cases, or where the patient or his friends desire it.'¹ Nor does the patient's right to a second opinion exclude his ultimate freedom to change his regular doctor. If he wishes to make a change, it is recognized that he has 'a full right' to do so;² provided, however, that 'a medical practitioner before superseding another in the care of a patient must satisfy himself that such other practitioner has been duly informed . . . of the fact that his services will be no longer required'.³

No exception can be taken to the principle on which these rules are based. But there is reason to believe that the rule, for instance, which permits a second opinion only in consultation is often very narrowly interpreted. Consultation is insisted on for two reasons, in order not to shake the confidence of the patient in his regular medical attendant, and in order that the consultant may be made familiar with the constitution and habits of the patient

¹ B.M.A., *Annual Handbook* 1927-8, p. 139.

² B.M.A., *Handbook for Recently Qualified Medical Practitioners* (1926), p. 26.

³ B.M.A., *Annual Handbook* 1921-2, p. 208. See also R. Saundby, *Medical Ethics* (2nd ed., 1907), p. 93: 'The patient has absolute freedom of choice of medical attendant, and . . . any attempt to set up the barrier of medical etiquette to such freedom is illegitimate.'

which can only be fully known to his 'family doctor'. Nevertheless, under modern conditions of mobility many patients have no 'family doctor' in the strict sense. Yet it is a common experience, though one cannot say how common, to find medical specialists and consultants who decline to act except in consultation with the local doctor, even where the local doctor is in no sense the patient's 'family doctor', and where there is no question of continuing a treatment. It seems impossible to explain this aspect of 'medical etiquette', which is merely irritating to the public, except by supposing that it springs from a—perhaps not unnatural—reluctance to do another man out of his job. It is not suggested that the attitude is universal, but merely that it exists. Nor does it imply any criticism of the rules, but only of those who interpret them, and who, perhaps unconsciously, forget that they are designed to serve the interests of patients, and not to preserve to each individual practitioner the rights of a territorial proprietor over the private domain represented by his practice.

Covering

The General Medical Council has issued a 'Warning Notice' providing that 'any registered medical practitioner who by his presence, countenance, advice, assistance, or co-operation, knowingly enables an unqualified or unregistered person . . . to attend, treat, or perform any operation upon a patient in respect of any matter requiring professional discretion or skill, . . . or otherwise to engage in professional practice as if the said person were duly qualified and registered, is liable on proof of the facts to have his name erased from the Medical Register'.¹ The ruling is subject to a proviso that it is not to apply so as to restrict 'the proper training and instruction of bona fide students or the legitimate employment of dressers, midwives, dispensers, surgery attendants, and skilled mechanical or technical assistants, under the immediate personal supervision of a registered medical practitioner'.²

A moment's reflection will show that some such rule is the inevitable accompaniment of a statutory register. The object of the register is to distinguish the qualified from the unqualified; and it would be rendered nugatory if the unregistered man could not be prevented from continuing to carry on his practice under 'cover' of a registered practitioner's name. Other registered professions have made similar rules against 'covering' the unqualified, and in one case the rule has been given statutory authority. The

¹ Warning Notice no. 2; see Appendix IV.

² Ibid.

Solicitors Act of 1843 lays it down that if a solicitor shall knowingly act as agent in any legal proceeding for an unqualified person, or permit his name to be made use of by an unqualified person, or 'do any other act thereby to enable such unqualified person to appear, act, or practise in any respect as an attorney or solicitor' in any legal proceeding, his name shall be struck off the roll.¹ The prohibition is not necessarily limited to the 'covering' of an unqualified man in the practitioner's own profession; for instance, the G.M.C. forbids a medical man to assist an uncertified person to attend a woman in childbirth,² and the Central Midwives Board, for its part, has ruled that 'the professional association of a midwife with an unregistered medical practitioner is undesirable, and might come within the meaning of the word "Misconduct"'.³ Furthermore, a medical practitioner must not enable any person, other than a registered doctor, pharmacist, or veterinary surgeon, to sell scheduled poisons under cover of his, the medical practitioner's, name.⁴

Membership of certain associations in the unregistered professions is no less a hall-mark of qualification than admission to the register in a registered profession; and were the non-member of such an association to carry on a professional practice under cover of a member's name, the public might be equally deceived. There is, however, no uniformity of policy in the unregistered professions in this matter. The Chartered Surveyors' Institution, for example, merely prohibits any firm not wholly composed of members of the Institution from describing themselves as 'Chartered Surveyors'. In the Institute of Actuaries, on the other hand, members are forbidden to 'enter into a partnership formed to undertake actuarial work with any person who is not himself a qualified actuary';⁵ while 'Statutory Valuations of Collecting Societies under the Industrial Assurance Act 1923 should not be undertaken in cases where the responsibility of advising on other important actuarial questions, such as distribution of surplus, rates of contribution, &c., is left in the hands of, or shared with, an unqualified person'.⁶ Among the practices which are regarded by the Institute of Chemistry as 'discreditable' to a chemist is that of 'supplying to other persons, not being qualified chemists, reports upon samples

¹ 6 & 7 Vic., c. 73, s. 32.

² Warning Notice no. 7; see Appendix IV.

³ *Report of the Central Midwives Board* for year ended 31st Mar. 1926, p. 8.

⁴ Warning Notice no. 3; see Appendix IV.

⁵ *Journal of the Institute of Actuaries*, vol. lviii (1927), p. 342. By 'qualified actuary' is presumably meant a member of the Institute or Faculty.

⁶ *Ibid.*

or processes with the knowledge that these other persons will issue such reports as their own work'.¹ Members of the London Stock Exchange are forbidden to belong to any other institution where dealings in stocks and shares are carried on. Jobbers who are members must not deal with non-members at all; while a broker may only deal with a non-member if it is for the advantage of the principal.

The proviso in the Stock Exchange rules permitting a broker to deal with a non-member, where it is for the advantage of the principal, is of some interest. In most professions the rules against covering are not subject to any similar qualification. Nevertheless there are reasons for thinking that it would be an improvement in certain cases if they were. The particular type of abuse which led the G.M.C. to issue its original Notice is described in the following terms by the Registrar to the Council:

'In certain parts of the country it was formerly customary for a qualified man in large general practice to employ a number of unqualified persons as his assistants. These, as they acquired a certain amount of rule-of-thumb experience, were gradually entrusted more and more with the sole care of patients. The practitioner sometimes did not see the patient until it was time to sign a death certificate in order to avert an inquest. Individual cases of gross abuse were one by one brought before the Council and condemned. Others, in which serious forms of evasion of the law were attempted, followed upon these; and as they arose these ingenuities were severally met and dealt with. At length, . . . having accumulated a sufficient body of experience regarding the mischief which had to be remedied, the Council summed up all in a "warning notice" respecting the professional offence of "covering". . . . The result was remarkable. . . . The evil . . . has now almost passed away.'²

However, in recent years the prohibition on covering has been turned to somewhat different uses which are not referred to in this passage. Indeed a further Notice has been promulgated; and though it is doubtful if it really adds anything to the original Notice, its wording sufficiently indicates the practices which are aimed at. 'Any registered medical practitioner who, either by administering anaesthetics or otherwise, assists an unqualified or unregistered person to attend, treat, or perform any operation upon any other person, in respect of matters requiring professional discretion and skill, will be liable on proof of the facts to

¹ *Proceedings of the Institute of Chemistry of Great Britain and Ireland* (1920), p. 232.

² See a memorandum by the Registrar on the constitution, functions, and procedure of the G.M.C. in the *Minutes of the General Medical Council* (1926), particularly pp. 266 and 267.

have his name erased from the Medical Register.'¹ It is more especially in connexion with this application of the rule against covering that the introduction of some qualification would seem to be called for, permitting breach of the rule where it is for the advantage of the client.

In 1911 Dr. Axham, a registered medical man, was struck off the register for administering an anaesthetic to a patient of Mr. (now Sir Herbert) Barker, a bone-setter who was unregistered and who had not in fact had any medical training. The case excited considerable public attention and dissatisfaction. Sir Herbert Barker possessed a remarkable intuitive gift for manipulative surgery,² and there can be little doubt that, in many cases, it was unquestionably to the 'advantage' of patients that they should go to him for treatment. Medical men of the highest eminence have publicly stated that it was their practice to refer patients to him, and that they regarded their action as justifiable.³ Sir Herbert Barker has since retired from professional life; but there is no reason to suppose that from time to time there will not appear other inheritors of peculiar aptitudes whose services ought to be made available to the community.

Nevertheless it is essential that, if practice by the unqualified is to be permitted at all, its scope should be subject to clear and definite limitations; otherwise state intervention in medical practice cannot be upheld. In order to see what those limitations should be, it is necessary to ask what object is really aimed at by the state registration of doctors. It is apparent from their ruling on the subject that the G.M.C. take the view that there are some forms of treatment which may properly be administered by unregistered persons provided it is done under supervision;⁴ and even though there are other forms of treatment which should never be administered save by a qualified man, at the same time the emphasis is clearly less on treatment than on diagnosis, and an examination of the medical curriculum reveals that it is primarily to equip him for the delicate and baffling task of diagnosis that the medical student undergoes the prolonged and expensive training that is now obligatory.⁵ It has not been suggested, nor is it probable,

¹ Warning Notice no. 5; see Appendix IV.

² See above, p. 106.

³ Notably Lord Dawson of Penn; see the report of an address delivered by him to a meeting of peers and members of the House of Commons in *British Medical Journal* (1926), vol. i, p. 451.

⁴ For instance, massage and the delivery of women in childbirth; see above, p. 441.

⁵ It is clear that Lord Dawson is of opinion that, while a person who administers treatment should always possess such qualifications as may be demanded by

that persons will appear with a special inborn flair for diagnosis. Still less is it likely that a manipulative gift, such as that possessed by Sir Herbert Barker, will be associated with any special faculty for diagnosis. Indeed, it is more probable that it will be found associated with an over-estimate of its own efficacy and an impatience and intolerance of ordinary diagnostic methods. If this is so, it follows that responsibility for diagnosis must remain to the qualified man. But in Axham's case these were not the facts. The patients to whom he administered anaesthetics were not his patients, or those of some other registered medical man, sent to Sir Herbert Barker for treatment. They were Sir Herbert Barker's own patients. His action cannot therefore be defended on any possible interpretation of the object and purpose of the medical register; since, if it was right, then there is no case for the state registration of doctors.

The action of Lord Dawson, on the other hand, and of other prominent physicians and surgeons, who have openly admitted that they sent patients to Sir Herbert and have taken credit for doing so, is clearly justified, inasmuch as they assumed responsibility for diagnosis and for the suitability of the treatment, and, inferentially also, for the qualifications of Sir Herbert Barker to administer the treatment.¹ Nevertheless the Warning Notices, as they stand, make no provision for such a case. It cannot be contended that treatment of the type administered by Sir Herbert Barker did not require 'professional discretion and skill'; and it is therefore impossible to construe the Warning Notices otherwise than as condemning any action on the part of a registered medical man which could 'enable' Sir Herbert Barker to treat a patient. Yet the G.M.C. took no action against these practitioners.² It may be that this was due to a misreading of its own Warning Notices, or to a realization that they were not justified in all their

the specific task allotted to him, the qualification need not be the qualification in diagnosis which is represented by admittance to the Medical Register. Indeed, he 'prophesied that treatment would often in the future be delegated to services ancillary to medicine'. *British Medical Journal*, loc. cit.

¹ 'Lord Dawson said . . . provided the doctor was satisfied that the osteopath was honest according to his lights and that his work was good, and that the patient wished to be treated he would agree to such treatment. His opinion was that a doctor doing so would no more be covering than if he was employing an unqualified masseur. "Covering" was when the initiative was taken by an unqualified man who did not understand what he was treating.' *British Medical Journal* (1926), vol. i, p. 451.

² Strictly speaking the Council cannot act on its own initiative, but must wait until a charge is preferred before it. What has to be explained therefore is not the inaction of the G.M.C., but rather of those elements in the profession which normally invoke its authority in these cases by preferring a charge before it.

implications. But this has not always been the explanation of the failure of professional tribunals to act where eminent practitioners are concerned; and that eminent practitioners at times get more latitude than their junior colleagues is not open to doubt. Under existing conditions, when public opinion is altogether ignorant of the legitimate objects of professional discipline, and is critical of all disciplinary action by professional tribunals, the risk attaching to the prosecution and expulsion of an eminent practitioner is enough to cause those, who are concerned for the maintenance of professional discipline, to avert their eyes where the offender stands high in public estimation.

ECONOMIC PROBLEMS

Organization

CHADWICK would like to have seen the number of vacancies in a profession ascertained and the number of entrants limited accordingly. 'I entertain', he says, speaking of the medical profession, 'a confident opinion that the public, as well as the profession, lose by the competition of unlimited numbers *within* instead of *for* the limited field of service.'¹ But, except in the case of public administration, numbers are not in fact so limited, and competition comes after, and not before, qualification.

The typical professional man is a free lance, and the most common and most simple form of organization is found when free-lance practitioners set up, either by themselves or in partnership with a small number of other practitioners, and seek to attract clients. The motive for partnership is convenience; it gets over the difficulties arising from absence from work owing to sickness or holidays. It makes possible division of labour and facilitates the rendering of some specialized services without the intervention of a consultant. In so far as a partnership is a continuous association, it increases efficiency in that it permits the preservation of records. But it tends to make the service rendered somewhat less personal; on this account it is forbidden to barristers and fellows of the Royal College of Physicians.

The number of partners seldom becomes large among doctors. Among solicitors, patent agents, surveyors, and estate agents the number may rise to half a dozen or more. Among architects still

¹ *Papers on the Reorganization of the Civil Service* (1855), p. 170.

larger firms are met with, while among accountants there may be twenty partners, which is the maximum allowed by law. Under an arrangement of interlocking partnerships the effective size of the group may be still further increased. A firm may be large in the sense that there are many partners or that there are many salaried employees or in both senses together. A large firm of accountants belongs to the last of these types, and is a complex organization. The qualified men fall into three groups, the partners, the salaried men who share in the profits, and the salaried men who do not. A small group of partners may form an executive committee or inner cabinet; there are often numerous branches over which a partner may or may not preside. Some qualified men employed by large firms remain salaried all their lives; this happens frequently among accountants and architects and, to a certain extent, among solicitors, surveyors, and estate agents. The number of unqualified men employed by a large firm may be considerable; they are mostly occupied with routine duties, though an unqualified solicitor's clerk may undertake difficult and responsible work.

In the industrial world companies may evolve out of partnerships, and this has also happened to some slight extent in the professional world. Evolution has not gone far in this direction because the company form of organization is not thought to be proper for the professions. The R.I.B.A. has condemned the conversion of partnerships into companies as 'undesirable'.¹ To understand the reasons for this condemnation, and indeed to appreciate the attitude of the professions towards organization and to pass judgement upon it, it is necessary to have in mind not only efficiency but also professional ideals. These ideals have been considered, and it will be appreciated that there is danger that large-scale organization will prove incompatible with them. Under such organization, more especially when it takes the form of a company, the relation of practitioner to client is indirect; company organization may mean in addition that the loyalty of the practitioner is diverted from his client to the company which he serves.² In consequence the feeling of personal responsibility is not aroused among practitioners or is undermined, and it is the responsibility of the practitioner to his client which lies at the basis of professional ethics. It is true that

¹ R.I.B.A., *Journal*, 3rd ser., vol. xxx (1922-3), p. 374.

² Thus the Code of Conduct for the Observance of Chartered Surveyors issued by the Institution in 1931 contains the following sentences: 'Chartered Surveyors must accept full liability for advice to clients on professional matters. On these grounds, they will not in future be permitted to convert their firms into limited liability companies unless special circumstances approved by the Council exist.'

the personal element in the service is not so prominent in some professions as in others, and therefore that large-scale organization, when it promotes efficiency, may not be always equally objectionable. But it is never free from danger.

Partnerships, however small, are inappropriate, as we have seen, when the service is very personal, as in the cases of physicians and barristers. Partnerships offer such conveniences that they are not inappropriate, so long as they remain small or do not interfere with the responsibility of practitioner to client. But in medicine the service remains personal, and the first step beyond the simplest form of organization is fraught with danger. Thus it is recommended that, 'save in very exceptional circumstances, a partnership arrangement should lead, after a reasonable number of years, to a position of financial equality between the partners, as far as the practice itself is concerned'.¹ This also explains the dislike of even temporary employment of a qualified medical man as an assistant to a free lance, which is illustrated by the ruling of the B.M.A. that 'it is not desirable for a principal to employ an assistant where he is unable to exercise adequate personal supervision over the latter, e.g. in some types of branch practice'.² In other professions, with the exception of architecture, the service is less personal and, in proportion to the decrease in importance of the personal element, it is possible, and within limits legitimate, to spread the organizing ability of experienced practitioners over a wide field of clients. The large firm offers the means by which this spreading may be accomplished. The position of the architect is peculiar; in one sense his service is very personal. But with appropriate means at his disposal, that is to say with a staff of qualified assistants, his services can be brought within the reach of a large number of clients. Some architects are said to have a hundred commissions upon their hands at one time; the creative work is done by them but may take the form only of shorthand sketches which are completed by junior partners and trained assistants. There is therefore a case for large firms when they permit unusual powers to be spread or unusual experience to be brought within reach of more clients than would otherwise enjoy them.

When the service is less personal, although it may be appropriate that large-scale organization should go a long way, dangers are still present. Some of them are indicated by Sir Albert Wyon, senior partner in one of the largest firms of accountants, when he asks: 'What methods assure to a large accounting organization, composed

¹ B.M.A., *Handbook for Recently Qualified Medical Practitioners* (1926), p. 37.

² B.M.A., *Annual Handbook* 1927-8, p. 136.

for the most part of salaried employees, the same sense of professional responsibility as that attainable by an individual practitioner or small group of practitioners working together as partners?'¹ He puts the matter in another way when he observes that 'it has sometimes been said in criticism of large firms that, while the ethics of the senior partners and of the head offices are a pattern for smaller firms to follow, the same cannot always be said of their branch offices. . . . It may be admitted that conditions may arise under which such criticism would be justified.'² 'Undoubtedly . . . the direct answer to this question is—the spirit, reputation and standards permeating the organization itself. Indeed . . . it is to these and other equally inherent and non-material influences . . . that must be attributed the ability of these large organizations to preserve and maintain the high sense of professional responsibility their founders engendered.'³ In another place he is more specific. 'Another essential part of the machinery requisite to secure uniformity of standards and the preservation of traditions, ideals and a high sense of responsibility is the frequent personal contact of partners and managers.'⁴ But enough has been said to show the nature of the problems which have made themselves apparent to a very experienced practitioner and the difficulty that he finds in suggesting solutions.

Though the difficulties inherent in the large firm may be avoided by various expedients, they always lurk in the background. Large-scale organization has in part grown up in order to make possible specialization and division of labour. There is an alternative method whereby specialization is rendered possible. Specialists may practise on their own account—not only those who undertake the more difficult, but also those who perform the less difficult, functions. This is what has happened in the medical profession. Not only are there highly skilled specialist consultants practising on their own, but there are also specialists performing independently functions of a more routine nature, midwives, masseurs, and bio-physical assistants. Under such circumstances there is no firm or other organization claiming the loyalty of the practitioner and thus perhaps diverting his attention from the client. It may be that this form of organization cannot be widely extended, but wherever it is applicable, it is to be preferred to large-scale organization. The signs of the times, however, point to an increase in large-scale organization at least in accountancy and architecture. Sir Albert Wyon attributes the rise of large

¹ *The Accountant*, vol. lxxv (1926), p. 209.

³ *Ibid.*, p. 209.

² *Ibid.*, p. 213.

⁴ *Ibid.*, p. 213.

be said to be a traditional scale for accountants; it is set out in Pixley's *Chartered and Incorporated Accountants' Charges*. The charges there given are based upon the time taken over different tasks and upon the status of the person doing the work.¹ In other professions there are no published scales, but this does not mean that customary charges do not exist. The B.M.A. tells its members that 'information as to the usual scale or scales of fees of a district can be obtained by members on application to the Honorary Secretary of the Local Division of the Association'.² The position among dentists is much as among doctors. Barristers ask a minimum fee of a guinea for a brief.

Though there is apparently a tradition in the matter of fees among accountants, their professional associations make no effort to enforce it. In most other professions the associations attempt to induce their members not to undercut, though objection is never raised to the remission of fees when the client is poor. The first clause of the Code of Ethics issued by the R.I.B.A. lays down that 'it is the duty of an Architect to uphold in every way possible the Scale of Professional Charges adopted by the Royal Institute'.³ Most professional associations admonish and warn those who fail in this duty, but inquiries have failed to disclose a single case of expulsion from a professional association because of undercutting. There does not seem to be much undercutting in the well-established professions, but in those which are less well established it is not infrequent. The chairman of the North and North-West London Branch of the Auctioneers' and Estate Agents' Institute declared in 1928 that fee-cutting in that area was 'intense'.⁴ This association has also had trouble because county branches have published scales deviating from those of the Institute.⁵ On the other hand, no objection is ever taken by a professional association when fees exceeding the scale are charged. Fees much above the average are found where the service rendered is highly personal, as in advocacy or surgery, or when payment is made for the name of a well-known firm, as in accountancy. In general, scales of charges, though intended to be minima and not maxima, in practice represent customary charges from which there is seldom departure either upwards or downwards.

¹ Thus an accountant's bill would be made out as follows: So much principal's time at so much per hour and similarly for qualified and unqualified assistants. But a lump sum may be, and often is, agreed beforehand.

² *Handbook for Recently Qualified Medical Practitioners* (1926), p. 24.

³ R.I.B.A., *Kalendar* 1931-2, p. 107.

⁴ *Journal of the Auctioneers' and Estate Agents' Institute*, vol. viii (1928), p. 534.

⁵ *Ibid.*, pp. 84, 85, and 229.

What is the explanation of the maintenance of one level of charges in most professions? There are powerful forces working towards this result. It is indecent to undercut. A man who does so at all in an old profession, or a man who does so in a newer profession with persistence and not merely when establishing himself, cuts himself off from friendly intercourse with his fellow professionals. In the long run it does not pay him to ostracize himself. The object of the young entrant is in fact to be received and accepted by his professional brethren on an equal footing, and undercutting is no passport to the circle. So strong are these forces that it is to them, rather than to formal admonitions, that we attribute the maintenance of customary charges.

The existence of customary charges, while keeping fees up to a certain level, also tends to prevent them from rising above this level. If there is nothing unusual about the service, it does not seem to be decent to make more than the customary charge. Further, in such a case, the client knows that he can get what he wants from a number of practitioners and is not likely to patronize the practitioner whose fees are high. The situation begins to change as the service rendered becomes more individual. The man able to render special personal service feels that he is entitled to charge a special fee, and the client thinks that it is worth while to pay it.

These customary charges are remarkably stable. Such revision as they receive is almost wholly directed to the more accurate definition of services and to the insertion of charges for new services as the technique of the profession develops. Cases where attempts have been made to raise the real level of fees are extremely rare. There is one notable example. The architects raised the 5 per cent. on the cost of building to 6 per cent. after the War, on the grounds that remuneration in the profession was too low.¹ Otherwise there is no evidence of attempts to push up the real remuneration by increasing fees. Where fees are not calculated on a percentage basis, adjustment may be necessary in order that they shall accord with changes in the value of money. After the War there were adjustments on this account. In 1919 the B.M.A. expressed the opinion that it was reasonable to raise fees by at least 50 per cent. In 1920 the council of the Society of Incorporated Accountants and Auditors expressed itself in favour of an increase of 50 per cent. on pre-War charges. These examples are typical of what occurred at that time, and it cannot be said that advantage was taken of the situation to raise the real level of fees.

¹ Strictly speaking it was previously 5½ per cent. (5 guineas on a £100 whereas now it is £6 on £100).

These scales and customary charges have frequently been before the courts. Professional men seldom agree upon a fee with their clients beforehand, and when they send in their accounts, disputes may arise. The decisions can perhaps be summarized somewhat as follows. If fees are not agreed upon, the requirement of the law is that they shall be reasonable. In deciding what is reasonable, attention is directed to the amounts which by general custom are paid in normal circumstances. Greer J. in *Smith v. Wood and Rozelaar* said: 'I am inclined to think that if a man goes to a member of the Royal Institute of British Architects and says "Do this work", unless he arranges something to the contrary, he is agreeing to pay the charges which are made by people who have those qualifications'; but he made it clear that these remarks were *obiter*.¹ In other words, scales provide evidence regarding these amounts, but they do not afford conclusive evidence. It is worthy of note that, two years after this case, the Practice Committee of the Institute reported that they 'desire to emphasize the desirability of architects acquainting their clients at the earliest opportunity with the R.I.B.A. scale of charges . . . as the Law Courts do not recognize our scale as binding unless it has been brought to the client's notice and agreed beforehand'.²

There are several instances of statutory maximum fees for specified services, those of a public auditor for example. But there is only one profession in which maximum fees for all classes of work, normally undertaken by the practitioners, are fixed by statute. Under the Solicitors Remuneration Act a committee, consisting of the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Law Society, and the president of one of the provincial law societies, is charged with the duty of making orders in which are specified maximum fees for legal business which does not go into court, such as conveyancing and the drawing up of wills. There is nothing to prevent a client from agreeing with his solicitor to pay a higher fee, but if he has made no such agreement, the solicitor cannot recover more than the scale fee. Charges for contentious business, that is business which goes into court, are subject to regulation in another manner. These charges are 'taxed' by a taxing master, who applies a scale resting on the authority of the Rule Committee of the Supreme Court, consisting of judges, barristers, and solicitors. There are, of course, other services undertaken by solicitors, such as estate management, which are not subject to legal regulation in any form.

¹ R.I.B.A., *Journal*, vol. xxviii (1920-1), p. 559.

² *Ibid.*, vol. xxx (1922-3), p. 374.

Fees are not calculated on the same principles in different professions. In the main, architects' fees are calculated as a percentage of the cost of the work, accountants' fees by the time taken, and solicitors' and patent agents' fees at so much per operation performed. The fees charged by dentists take into account the time employed, the standing of the practitioner, and usually also the financial position of the patient. The financial position of the patient and the standing of the practitioner play a large part in determining medical fees. In the case of barristers, the standing of the practitioner is the dominant factor.

In the interests of the public, fees should be calculated on a rational basis and in such a manner that expenses can be estimated beforehand. They should also be reasonable and yield no more than a fair return to the practitioner. Leaving the last point until later, the most rational method of calculating fees is to take into account the time spent and the skill of the practitioner, which are the most important factors in the situation. The difficulty of the service performed is also relevant, but it is in part allowed for in the time spent. So far as it is not fully allowed for, a special charge is justified. In addition it is proper to charge for a proportion of the overhead expenses and for materials employed at cost price. Looking at the prevailing methods of fee charging in the light of these considerations, it is evident that the taking into account of the financial position of the client can only be justified by expediency. So long as there is no better way of providing professional services for everybody than by undercharging the poor and overcharging the rich, it may be upheld. But with the increase of public medical services adequately remunerated, the need for this method of charging is declining. It does not appear, however, that the medical profession is yet in the mood to adjust its fees accordingly.¹ Its attitude seems to be that there is some permanent justification for raising fees to the wealthy because of their wealth. The percentage system is not equally rational, but it has the merit of certainty. The client knows at the start what he will have to pay. On these grounds it has recently been proposed that legal charges should be placed on this basis.² But it does not appear that the amount involved in litigation has anything to do with the time

¹ The financial position of the patient may be taken into consideration in quite another manner. It sometimes happens that a cure may be effected, say a tooth saved, at considerable expense in time and material, or a cheap and drastic remedy applied, say a tooth extracted. The financial position of the patient may determine the remedy and therefore the fee.

² *Expense of Litigation*, Report by the London Chamber of Commerce (1930), p. 9. The suggestion is limited to cases involving less than £1,000.

taken or the difficulty of the task. Similarly the relation between the cost of a building, on the one hand, and the skill of the architect and the time taken by him, on the other hand, is not close. In America another system is sometimes employed. The architect estimates his services as worth so much per unit of time. He calculates the time that he will have to spend on the project and arrives at a sum that is agreed with the client. The fee is not affected by any difference between the estimated and the actual cost of the work. To the fee is added the cost of draughting plans and a sum, calculated as a percentage on the cost of draughting, to cover overhead charges.¹ The percentage system also so works that the fee may be inadequate for a small operation and excessive for a large operation. This may be justified by the same arguments as are used in the case of medical fees because it is the rich clients who give the larger orders. It is difficult to weigh up the merits of the percentage system. The fact is that the attainment of certainty on the one hand and of a rational method of calculation on the other are difficult to combine. It is more important in the long run that the charges should be rationally based than that they should be known beforehand, and on this account the system of basing charges on time and skill is to be preferred. In any case the method of calculating fees should be known, and it is a matter for legitimate complaint against barristers that secrecy surrounds the whole question of their fees. This secrecy inevitably suggests that haggling goes on, and the profession would gain in dignity if this secrecy was done away with.

Except in the case of the Bar, the professional associations do no more than attempt to maintain a certain level of fees for normal services. At the Bar there are rules relating to fees for special services, but before describing them reference must be made to the fees charged by eminent practitioners, since the rules in question only become of importance with reference to these fees. We have said that fees above the customary level are seldom charged except when the service is very personal and the skill of the practitioner exceptional. The fees charged by counsel of the highest standing and by the most eminent surgeons are huge and quite out of the proportion to the degree by which their skill exceeds that of their less famous colleagues. How does this come about? These payments are made to obtain the services of particular men by clients who hesitate at no expense. When a man has decided

¹ For a description of this system see a paper by R. Clipston Sturgis, past president of the American Institute of Architects. *R.I.B.A., Journal*, vol. xxvii (1919-20), pp. 9 ff.

to engage in a law suit, he is all out to win, and moreover hopes to recover costs from the other side. Nowadays it is less often an individual than a corporation who goes to law, and the resources available for hiring the most eminent practitioners are thus sometimes almost unlimited. Similarly a patient, faced by an operation, demands the highest skill and does not count the cost. Solicitors and general medical practitioners are cautious and hesitate to take the responsibility of advising the clients to go to some one who might do well enough but has not got the highest reputation. When they do tender such advice, the client himself often disregards it and decides to go to the man with the greatest name. These fabulous fees may be indefensible, but apart from those very desirable reforms in the educational system which we have discussed,¹ there is nothing in the organization of the professions which gives rise to them, and there is nothing which the professions could do to reduce them even if they were so minded.

By long-standing custom, now supported by the Bar Council, a leader may not appear unless a junior is briefed with him. The junior's brief must be marked with a fee bearing to that of the leader the proportion of either 2 to 3, or 3 to 5. When the huge fees of eminent counsel are borne in mind, it is evident that this rule greatly raises the fees of juniors. It is true that juniors do much heavy work out of court and that their apparent inactivity in court does not mean that they do nothing for what they get. It is also true that if two counsel are required, there is a certain justification for a rule of this kind as a protection against exploitation. But what happens in fact is that the circumstances described in the previous paragraph swell the fee of the leader and that the rule communicates a corresponding inflation to the fee of the junior. A recent report by the London Chamber of Commerce contains the following passage:

'The rule by which a Junior Counsel is entitled to a brief fee equal to two-thirds of whatever the Leading Counsel's fee may be is illogical and one which must increase expense. If a Junior Counsel alone without a Leader is employed on a trial his clerk is usually satisfied with a reasonable fee which in practice in most cases is not as much as and rarely more than the two-thirds of the Leading Counsel's fee, that he would get if there were Leading Counsel, and the Junior Counsel has the responsibility of conducting his case alone. If Leading Counsel is employed he has less responsibility. If, again, a Leading Counsel of great eminence whose fee is correspondingly high is employed the Junior Counsel's fee increases accordingly under the two-thirds rule, and yet his responsibility may decrease even further. It is entirely illogical because if the parties for any reason brief a fashionable Counsel

¹ See p. 380.

(fashionable Leading Counsel are usually sought after because on merits they deserve their reputation) it does not in any way increase the value of the Junior Counsel's services. We consider that the two-thirds rule should be abolished. On the other hand under the present system Junior Counsel before trial fulfil most onerous and responsible tasks such as advising on the merits of the case and on the nature of the evidence to be called on the trial, which at present is under paid. We consider that for advising as to whether or not to continue a case, and as to the evidence to be brought, the Junior Counsel's present fee which is allowed on taxation usually 2 or 3 guineas, should be considerably increased.'¹

Turning to the question of professional salaries we include not only the salaried professions and cases in which members of a profession, mostly free lance, take salaried posts, but also cases where practitioners, normally free lance, contract to perform public services, as in the case of panel doctors. It seems that on the continent of Europe journalists were the first professional men to adopt collective bargaining. In this country the medical profession led the way. The fact that this ancient and dignified profession adopted the method, and used it with vigour and success, gave it a measure of respectability and accounts for its wide use. Collective bargaining among doctors, teachers, dentists, local government servants, and others has been studied, and some description has been given of the elaborate organization often involved. The procedure does not differ in essentials from that in use in the trade union world. Behind the bargaining there seems to lie the threat of a strike, and strikes have occurred among teachers though not elsewhere. The blacklist is also widely employed. But these methods, collective bargaining and the blacklist, are limited in their application. They are used freely in relation to public appointments, but, except in the case of the merchant navy, hardly at all in relation to posts in private industry. Chemists, engineers, and physicists, who are mostly in private industry, have seldom employed either method except in regard to the few public appointments open to them. Their leading associations confine themselves to the giving of private advice to members as to the salary which they should accept from firms. They endeavour to raise salaries by increasing the prestige of membership. They inculcate the view that skilled services are worth paying for, and that membership of the association is a guarantee of ability to render such services. 'It has been the object of the Institution of Civil Engineers to establish the position of its members upon their possession of special professional knowledge.'²

¹ *Expense of Litigation*, Report by the London Chamber of Commerce (1930), p.8.

² *Minutes of Proceedings of the Institution of Civil Engineers*, vol. ccxii, part ii (1920-1), p. 305.

The contrast between the attitude to public employment, where there is no hesitation to put the two methods into force, and the attitude to private industry, where intervention is made with the utmost circumspection, is marked and runs right through the professional world. The explanation seems to lie in part in a reluctance to appear to side with the wage earners against the management, because professional men regard themselves as on the managerial side. The situation changes as soon as the government takes charge. It will be remembered that the National Association of Colliery Managers, which is careful not to appear even to contemplate the use of trade union methods, was prepared to reconsider its attitude when there seemed to be a chance of the nationalization of the mines. In part the explanation may be the solidarity of the employing side in the case of government posts which seems to demand a corresponding solidarity among the employees.

It is not necessary to enter into a discussion of the ethics of collective bargaining. It is enough to point out that the alternatives are the arbitrary fixation of scales, without consultation with the employed, or absence of any system. Collective bargaining has been found preferable to either of these alternatives on many grounds. It is thought to imply the right to strike, and it has been said that it is derogatory for professional men even to contemplate such action. There is a difficulty here because the withdrawal of labour is not compatible with the obligation to serve which is an ideal of the professional world. But it may be doubted whether collective bargaining must carry with it the right to strike in order to be effective. If bargaining is conducted regularly and in the open, those who employ it can be assured that a good case will ultimately succeed in a well-ordered society. The method is of course open to abuse. The best safeguards against abuse are publicity of negotiations with all cards on the table; extortionate demands on one side and unfair treatment on the other are thereby discouraged. The negotiations between the government and the medical profession since the War have been pursued, not so much by pull and push, threat and counterthreat, as by the presentation of a case, based on elaborate figures, which has been referred to expert statisticians for report. Doctors on one occasion, as we have described, pressed hard for terms that now seem excessive; but of late years, with the development of the habit of presenting a documented case, the demands have been more moderate, if the reports of the impartial experts, appointed to examine the claims, may be taken as evidence.

The prevalence of traditional charges and of salary scales

transforms, but does not abolish, competition between professional men. Indeed competition remains keen, but it takes the form of competing for clients—employers being the clients of the salaried professions—by offering better or more attractive services rather than by accepting lower remuneration. We have been privileged to see the report of a committee appointed by a professional association to examine the case for issuing a scale of fees; stress is laid in the report upon the fact that ‘a scale would tend to focus clients’ attention rather upon the manner in which the work was performed than on the cost of it’. When the services offered are specific to a practitioner and much sought after, clients may bid for them and run up the remuneration. But on the whole the tendency in the professional world is towards a standard fee or a standard salary.

Incomes and Monopoly

‘Mr. Sidney Webb stated strongly the view that no profession which has a monopoly and which depends upon fees for its remuneration could be trusted with the opportunity of charging whatever it chooses.’¹ In order to test this view, information is needed concerning incomes in registered and unregistered professions. It would then be possible to discover whether incomes rule higher in those professions to which monopolistic privileges have been granted. But information on this subject is meagre. We know very little about the average income or the range of income in any profession. The medical profession is remarkable for the fact that only a small percentage of practitioners fail to establish themselves in a position where they earn a very fair income. In 1869 Sir James Paget published figures relating to 1,000 students of St. Bartholomew’s medical school. Seventy-six per cent. attained at least a fair degree of success, which means a practice large enough to maintain a professional man in adequate style.² It is improbable that so large a proportion of qualified men do so well in any other profession, and it is likely that if the investigation was repeated to-day, it would show still more striking results. When we come to figures there is ‘no reason to doubt that a fully employed panel doctor in a populous area, using half his time for panel and half for private practice, can make £1,400 per annum free of expenses’.³ That the position of doctors is good is

¹ *Report of the Departmental Committee on the Dentists Act, 1878* (1919), p. 51.

² S. Squire Sprigge, *Medicine and the Public* (1905), p. 30.

³ *Royal Commission on the Civil Service, 1929–30. Statement submitted by the Association of First Division Civil Servants* (1930), p. 55. This Association, when

borne out by the fact that they have established a scale for medical officers which fixes the minimum commencing salary for those employed in local government service at £600. They could not have obtained so good a commencing salary for a young practitioner unless prospects in private practice were good. In one respect the position is probably much the same among dentists and veterinary surgeons; that is to say, the average income is not an illusory figure. But the average income among dentists is smaller than among doctors, and among veterinary surgeons smaller than among dentists. Figures relating to public salaries and army pay for the different corps are sufficient evidence for this statement. With regard to veterinary surgeons we are told that 'there are city practices which produce incomes up to £3,000 per annum while rural practitioners normally earn between £600 and £1,500 a year'.¹

It is difficult to say anything about incomes in other professions; the average income, if we could obtain it, would tell us nothing; not only are some large incomes earned but there is no level below which the incomes of qualified men may not sink. Of solicitors it is said that a university man should earn £1,000 after ten years, and £2,000 at the age of forty.² But qualified men who remain salaried, and others, whose practices are small, may get only a few hundreds a year. The position of the salaried accountant is probably not much better on the average than that of the salaried solicitor. But in the higher ranges of accountancy 'it is probable that men of outstanding ability and connexions are able to earn incomes which compare not unfavourably with the highest of those in other professions'.³ The situation in architecture is apparently much like that in accountancy both in respect of those who are best off and of those who are worst off. That the average income among architects is not high may be gathered from the fact that the salary of Grade 1 architects at the Office of Works is from £450 to £650 with civil service bonus. Among surveyors 'incomes range from about £500 a year to £2,000 or £3,000 or even above'.⁴ For land agents 'there are a number of posts carrying £1,000 a year: perhaps £600 may be regarded as a medium figure'.⁵ Among auctioneers 'the smaller businesses may produce anything from £500 a year submitting evidence about the remuneration of its members, assembled information about the income of members of other professions of comparable standing.

¹ *Veterinary Surgery*, Choice of Career Series, No. 3 (1929), p. 5.

² *Royal Commission on the Civil Service. Statement submitted by the Association of First Division Civil Servants* (1930), p. 55.

³ *Accountancy*, Choice of Career Series, No. 6 (1929), p. 15.

⁴ *Surveying, Land and Estate Agency and Auctioneering*, Choice of Career Series, No. 4 (1929), p. 5.

⁵ *Ibid.*, p. 6.

upwards, the large ones several thousands. Unless, however, a man can rise well above the average level, his prospects are very limited. There are a few assistants earning £1,000 a year and over; but it is obvious that the smaller practitioner cannot afford to pay high salaries to assistants, and in such circumstances the latter may never rise above £250 a year.¹ In 1930 the Institute of Chemistry conducted an inquiry into the salaries of its members. Of fellows at home, 15 per cent. were getting between £1,000 and £1,500, while nearly 50 per cent. were getting between £500 and £1,000. Of associates at home, 25 per cent. were receiving between £500 and £1,000 and 62 per cent. from £250 to £500. Members abroad were getting considerably higher salaries.²

The facts which have been set out lend no support to Mr. Webb's fears.³ There is no evidence that professions with monopolistic privileges have higher incomes than those without them. The veterinary surgeons have possessed a virtual monopoly since 1882, and their incomes are lower than in other professions where monopoly is partial or absent. The dentists were given a complete monopoly in 1921, and at the same time entrants were obliged to pass through a four years' training course; yet there is no evidence that dental fees have been raised as much as would be expected by the provisions relating to entry. There is, in other words, no sign of any correlation between the monopolistic privileges which have been granted and average income. If a further privilege was given by limiting the number of entrants, the result might be different. But as things are the supply is not limited because entry is always open to those who can pass the qualifying test. When the average income in a profession runs high, it can often be traced to excellence of organization, as in the case of the medical profession. There are cases of excessive incomes among some members of certain professions; but they relate either to the situation where there is great demand for the personal service of an eminent practitioner or to the large firm where the partners are in fact conducting a business.

It follows that a safeguard against an abuse of monopoly by the extortion of high fees is at present unnecessary. Such a safeguard would have to take the form of legal maximum fees, and the experiment of introducing them among solicitors is not encouraging. That clients should understand on what basis fees are charged and that they should have some indication what they will amount to

¹ *Surveying, Land and Estate Agency and Auctioneering*, Choice of Career Series, No. 4 (1929), p. 11.

² *Journal and Proceedings of the Institute of Chemistry* (1931), part iii, p. 197.

³ *Report of the Departmental Committee on the Dentists Act, 1878* (1919), p. 51.

when they engage the services of a practitioner, is to be desired of any system of fee charging. The solicitors' scale is so little understood by the practitioners themselves that they usually keep a special clerk whose duty it is to master it; and it is probable that the layman who understands it has yet to be born.

It also follows that there is nothing arising from monopoly that the community can justly recover by special taxation. Nevertheless it may be expedient to permit and encourage the professions to impose a levy upon themselves in order to facilitate entry, both because exclusion on the ground of poverty is injurious to a profession, and because the maintenance of the open door for all who can qualify renders the exploitation of monopoly impossible. The registration and retention fees, now charged to members of the registered professions, will be found set out in Appendix III. We have argued that examination and registration fees should cover the cost of examination and of registration and no more. The method whereby entrants are obliged to compound for life membership and thus to pay a very large registration fee, as at the Bar, is objectionable because it tends to exclude the poor man; a tax which falls upon entrants is still more objectionable, and such a tax is imposed upon entrants to both branches of the legal profession. The cost of maintaining the registration authority should be met from the proceeds of an annual retention fee—that is a fee for retaining a name upon a register—charged to established members of the profession. There is no case for imposing a tax upon practitioners the proceeds of which go to the Inland Revenue, as is now the case with the greater part of the charge for the practising certificate taken out annually by solicitors. The results of such a tax will merely be to raise the cost of professional services to the public. But there is a case, as we have just said, for the imposition of a levy upon established practitioners if the proceeds are applied to education and research. Under those circumstances benefit will accrue both to the profession and to the public. The Dental Board is empowered to charge a registration fee of £5 and an annual retention fee of the same amount. It now charges £2 for registration and a retention fee of £4 (£2 for the first two years). Out of a total income of £43,000 in 1929, £21,000 was spent on educational grants, £5,000 on research, £4,000 on health education, and £700 on lectures. Similar powers might well be granted to all registration authorities.

The incomes of free-lance practitioners on the whole are not excessive on the supposition that efficient services have been given throughout a year. We have discussed efficiency in one sense and

have discovered no grounds for serious complaint. But there are other aspects of efficiency which we have not yet considered. In order to understand them, it is necessary to remember that the income of the free-lance practitioner is composed of two elements—the fee for each service rendered and the number of services performed. It might be that practitioners were underemployed, performing fewer services than was possible in the time, and nevertheless, by overcharging for them, earning the income that would arise from more employment at lower fees. In other words the available work might be spread among an excessive number of practitioners who charged too much for their share of it. Something of this kind occurs in the retail distribution of many articles; if there were fewer petrol pumps, each would distribute more petrol and the cost of distribution per gallon would be reduced. But our survey gives no ground for supposing that free-lance practitioners are generally underemployed and make up their incomes by charging higher fees than they would otherwise do.¹

Again practitioners might use cumbrous methods or perform unnecessary services, and thus, though fully employed, would not earn their incomes. Complaints that this happens are sometimes heard. It is not easy to discover how far there is truth in the allegation that unnecessary services are sometimes rendered with the result that unnecessary fees are charged. The allegation is more often levelled against doctors than against any other class of professional men. The examination of cases which come to notice seldom reveal any substantial grievance. It is worthy of note that charges of inattention are as common as of over-attention, and this raises the suspicion that the cause of the trouble may be that the lay public does not appreciate the medical needs of patients. People not only think that they require medical attention, when such is not the case, but also think that they do not want watching when there is need for it.

It is easier to look into the charge of cumbrous methods. This charge is made primarily in the case of solicitors, and has been familiar since the days of Jarndyce and Jarndyce. The matter has been recently investigated by a committee representing those who pay the heaviest bills rendered by solicitors and who are therefore

¹ This judgement is based on what can be ascertained about the daily life of professional men. On the whole they seem to waste less time than business men. The decrease in the number of persons to a doctor in this country, from 1,513 in 1881 to 881 in 1930 might suggest that there are now too many doctors who spread out the available work between them rather thin. But the fact seems to be that there were too few doctors at the earlier date. Moreover, methods of treatment have become more elaborate and more time is required over each case on the average.

disposed to be critical. The report of the committee contains the following passages:

'The Solicitor who has any volume of litigation and who desires to deal with it adequately is obliged under the present procedure to keep a considerable staff. All evidence has to be carefully marshalled and sifted and all witnesses must be examined and their statements taken which is a matter requiring considerable skill and experience. In commercial and shipping cases a Solicitor and his Staff must be prepared to go anywhere at any time and to make journeys abroad at short notice. All this requires a competent staff who naturally expect to be adequately paid by their employers.

'The large quantity of correspondence which now takes place as a matter of course in any business matter has to be sifted and examined, which also requires competent assistance and as a rule a considerable volume of correspondence and documents has to be copied owing to the modern requirements of the Courts which involve either the employment of numerous typists or else considerable payments to outside copyists. Accounts have to be kept more elaborately than in business concerns, and the compulsory rendering of bills minutely itemized for taxation (a duty not imposed on other professions) requires additional staff. (This incidentally is a burden from which foreign and American lawyers are entirely free.) Staffs require space, and rents in the inner parts of London are now little, if any, less than in New York. It will be seen, therefore, that the overhead charges of Solicitors must be very considerable. It is usually estimated nowadays that approximately 50 to 75 per cent. of the fees of a Solicitor go in overhead expenses.'¹

In other words elaborate and costly methods are dictated to the profession by the procedure which is laid down for it to follow. The remedy is not by any means altogether in the hands of the profession. Services are not made costly by cumbrous methods which the profession could reform or eliminate without assistance from the legislature or without the co-operation of other elements in the community. The same is true of other professions against which this charge has been made. The charge therefore shifts to one of not bringing influence to bear upon reform of procedure, and that is a matter which falls to be discussed in the section dealing with the public activities of the professions.

It is impossible to find any absolute criterion whereby to judge what any work is worth. But we may put a final question and ask how professional incomes compare with other incomes. The following passage gives the views of a committee of business men on this point:

¹ *Expense of Litigation*, Report by the London Chamber of Commerce (1930), p. 4.

'In our experience all professional men, whether Doctors, Accountants or Solicitors, who are moderately successful by middle age earn about the same amount of net income. It cannot be expected that a Solicitor or Barrister will accept a lower standard of life than a Doctor or an Accountant, nor would it be to the advantage of the public that they should. So far as our experience goes, the average Solicitor or Barrister (we do not refer to special cases but to the average) does not earn a larger income than the average Doctor or Accountant. It may be noticed that the average Barrister or Solicitor when he dies, unless he has private means, seldom leaves a considerable estate, which seems to corroborate our experience. It is also corroborated by the following extract from an article entitled "The Cost of Litigation" in the *Nineteenth Century* for January last by a very experienced official, the Registrar of the Admiralty Court, who writes: "A popular idea exists that Lawyers make large profits from litigation, but it is not the most satisfactory side of a Solicitor's business, and if the Wills of lawyers of either branch of the profession are examined year by year it will be found that the amounts left by deceased lawyers do not exceed, even if they equal, the estates left by men who have passed their lives in other work. The average income of barristers and solicitors are not greater than those of doctors, architects, engineers, and men of business." One does not usually hear criticism of the charges of other professional men such as Accountants, Doctors or Engineers, and, so far as our experience goes, impartial critics of the cost of litigation acquit barristers and solicitors of making excessive incomes compared to other professional men. In our opinion their remuneration under the present procedure is reasonable and the net income of the average legal practitioner in the interests of the public should not be reduced having regard to the high standard of education and probity required in the legal profession, the long period of waiting before earning a living wage, and the strict supervision exercised over the Barristers and Solicitors, especially the latter.'¹

Thus taking standards and conventions as they are, there is a good case for saying that the average income in the better paid professions is not excessive. The history of the professions gives ground for holding that the service improves with a rise in income relatively to other classes in the community. Where incomes remain relatively low, as among veterinary surgeons, there is usually evidence that the service is not what it might be. We do not suggest that there is an invariable and pleasing harmony between good service and good income; what the facts point to is that, as things are, in order to attract men of ability and to make it worth their while to undertake a costly training, it is necessary that professional incomes should not rule below the present level in the better paid professions.

¹ *Expense of Litigation*, Report of the London Chamber of Commerce (1930), p. 3.

'We trust our health to the physician; our fortune and sometimes our life and reputation to the lawyer and attorney. Such confidence could not safely be reposed in people of a very mean or low condition. Their reward must be such, therefore, as may give them that rank in society which so important a trust requires. The long time and great expense which must be laid out in their education, when combined with this circumstance, necessarily enhance still further the price of their labour.'¹

Unemployment and Establishment

It is one thing to become qualified to render professional services and another to find an opportunity to earn an income from so doing. It is necessary to become established, and since those who have not got established are unemployed, we may consider the problems of establishment and unemployment together. Unemployment in the salaried professions may manifest itself either in the loss of posts by established practitioners or in the failure of young entrants to find posts. Since a man cannot be said to enter the profession of public administration until he gets a post, there is little unemployment in this profession. In the merchant navy industrial depression may lead to much unemployment, but in other salaried professions unemployment among senior practitioners is not very common and does not present a serious problem. Similarly, except in the depths of the present depression, there has been little evidence of failure of qualified entrants to obtain salaried posts. The supply of entrants seems to be adjusted to the demand with a certain nicety. Such evidence as is available does not show that salaries are forced up by a shortage, and there is little evidence that they are kept down by an oversupply of young professional men. The maintenance of employment registers by professional associations is now almost universal and is a factor in bringing about this adjustment. By this means the associations keep their fingers on the pulse of industry. The heads of the professional training departments are mostly members of the relevant associations and encourage or discourage entrants as the situation changes.

Among the free-lance professions unemployment cannot manifest itself in the loss of posts by senior practitioners. A free-lance practitioner, like an entrepreneur, meets slack times by short hours. Unemployment in these professions may also take the form of failure of young qualified men to establish themselves. There is no doubt about the difficulties in the way of establishment, but

¹ Adam Smith, *Wealth of Nations*, Bk. 1, Chap. 10.

before we can say how far they are due to an over supply of would-be entrants, the situation requires investigation.

The young entrant to a free-lance profession may try to build up a practice of his own. For this purpose he must be in possession of capital, in order to provide such equipment as may be necessary and to tide over the period of waiting when he is not maintaining himself. No generalizations can be made about the average length of the waiting period. It is seldom short, and the costs are always considerable. It is sometimes suggested that the difficulty of building up a practice is increased by the prohibition on advertisement. But the prohibition applies to all alike. If advertisement was permitted, it would certainly increase the costs of the waiting period and might not shorten it. Indeed, the advantage would probably be on the side of established men with large resources. It is also said that the scale of minimum fees is a difficulty. In the older professions customary fees are well understood and linked in the minds of clients with competent service. There is little reason to suppose that an offer to doctor on the cheap would be a hopeful way of building up a practice. In the newer professions undercutting, as we have seen, is practised by the younger men to some extent, and in general it is difficult to establish any connexion between the prohibition upon undercutting and difficulty in becoming established. The reason why the public does not patronize the young man is not because they think his fee excessive for the service if he can perform it, but because they are not certain that he is competent. He must wait for the chance of showing his competence.

A custom prevails in the world of architects and engineers which gives this chance and possesses the merits of advertising without its attendant disadvantages—namely the custom of placing commissions as the result of a competition. A young man, who wins a competition, exhibits his competence and may establish himself straight away. The present century has seen two striking examples in which, by success in a competition of this kind, very young men have not only gained valuable commissions lasting over many years but have also established reputations of the first rank at the outset of their careers.¹ The competition system has the advantage of shortening the period of waiting for a few able men, but it is incapable of wide extension. It can only be applied where the service to be rendered is capable of accurate indication beforehand in the kind of shorthand which is represented by an architectural

¹ Sir Giles Gilbert Scott was 21 when he won the competition for Liverpool Cathedral, and Knott, successful competitor for the London County Hall, was 28 at the time of his success.

plan. There is no general solution here of the problem of establishment in the free-lance professions. Greater use might perhaps be found for the system among engineers and naval architects, but it by no means solves the whole problem of establishment even where it is applicable. Many competitions fall within specialized lines of architectural practice, and the young architect, who enters for them fresh from the architectural school, is at a great disadvantage, because he has been studying general principles of design and has not had to take costs into account. In large competitions for ecclesiastical and civic buildings of the first importance the young architect is severely handicapped by the great expense involved. A building of any magnitude necessitates a large number of accurately drawn plans, and to prepare them within the allotted time, the services of several salaried draughtsmen will be needed. In the end the sum involved will be considerable, and thus the possession of capital again turns out to be a prerequisite before a practice can be established, while the risk is increased.

The young entrant may also buy a practice or a partnership. The purchase price of a general medical practice is usually computed at one and a half year's gross profit reckoned on the three years preceding the purchase. The usual price of a veterinary practice is stated to be one year's gross income. To build up a new practice would cost at least as much. The cost of a partnership varies. Since the goodwill of the firm remains intact, the price may be higher than in the purchase of a practice. But a man who is desired as a partner may be admitted on easy terms. It must also be borne in mind that large premiums are sometimes paid by pupils in the expectation that places will be found for them and that these premiums are in fact part of the purchase price.

It has been suggested that there is something in the sale of practices which is antagonistic to the interests of the public since it appears that what is being bought is a right to make an income out of the public. Fellows of the Royal College of Physicians may not purchase practices, and it may be asked why all medical practitioners should not adopt the same ethical standard? Why does the B.M.A. say that 'the good will of a practice is legitimately the subject of sale and purchase'?¹ The reply is that the rule of the Royal College of Physicians has reference to the fact that its fellows do not engage in general practice, and that since a consultant's practice is purely personal, true consultants have nothing to sell. On the other hand, the practice of a general practitioner, unlike that of a consultant, is geographically circumscribed, and so long as it

¹ *Handbook for Recently Qualified Medical Practitioners* (1926), p. 37.

remains the habit of the layman to select as his medical adviser the general practitioner whose house is nearest to his own, there will continue to be a goodwill to which, on the death or retirement of a practitioner, some other practitioner must succeed by purchase or otherwise. The goodwill of the practice rests upon the inertia of the public, and when it is sold, the purchaser buys the right to enjoy the patronage of the public arising from that inertia. It is a kind of incorporeal right over a certain area, and the public does not suffer because it is not given away. Indeed in cases where accurate records are kept, the public gains by the sale of practices, if the alternative to sale is the dispersal of the records.

The necessity of finding a considerable sum of money before a man can earn a living as a free-lance practitioner is a serious impediment in the way of a man of small means. This impediment exists independently of an over-supply of entrants, and there is no conclusive evidence that a marked over-supply at present exists. The difficulty is not, however, of a kind that is within the power of the professions to remove. That it takes time to build up a practice and money to buy one is not the fault of the professions. It is sometimes made a matter of complaint that men of good family find establishment easier than those less fortunately situated. So far as good family means good manners, there is no ground for complaint. So far as it means that social connexions have a money value, that is a feature in our social system which the professions did not create.¹

The Council of Legal Education awards a scholarship of 100 guineas per annum for three years twice yearly, at Hilary and at Michaelmas, to the student who does best in the final examinations. This sum enables the holder to meet the cost of chambers and clerk, and three years are enough to permit a student of ability to establish himself. But the expense makes it impossible to solve the problem by an extension of such scholarships. The position might be alleviated by better arrangements for temporary salaried employment.² If the conditions attaching to temporary employ-

¹ The advantages accruing to those possessing good social connexions are very great in certain professions. It is said that an architectural firm may find it worth while to take in a member, whose professional ability is of the slightest, provided that he can make himself agreeable at golf clubs and other places where commissions are to be picked up. Thus a man, who can only scrape through his examinations, may nevertheless be very well placed, if he has been to a good school and is acceptable as an acquaintance to people with means. But to allege, on the basis of such facts, that the professions are exclusive and snobbish, is to attribute to them the responsibility for the social system as it is.

² Thus if transfer from one branch of the legal profession to the other were made easier, a barrister could begin his career by taking a salaried appointment in a solicitor's office.

ment were regulated, it might become the habit for young entrants to seek it. They would be assured of a livelihood while they looked round for openings. At present employment is only taken when it cannot be avoided, and this is largely due to the poor conditions prevailing. The B.M.A. is the only professional body which has given the matter consideration. It 'has not laid down any definite policy with regard to the remuneration of assistants'; but it 'has formulated certain principles to serve as a guide to members of the profession who either employ or act as assistants'.¹ The principles include suggestions as to salary, holidays, and conditions of work, and it is said that the promise of a partnership should not be made a reason for reducing the salary.

THE PROFESSIONS AND THE PUBLIC

Professional Men and their Clients

THE attitude of the professional man to his client or his employer is painstaking and is characterized by an admirable sense of responsibility; it is one of pride in service given rather than of interest in opportunity for personal profit. The professional man who gave a lower standard of service in necessitous cases, where his remuneration was little or nothing, would be regarded as an unworthy colleague by his professional brethren. It is not for nothing that the phrase 'professional pride' is in common use; it indicates a code of behaviour where the first consideration is the need of the client and the quality of the work. But there are certain wider aspects of the relation of the professions to the public, which remain to be described, and if this section, from now onwards, is more concerned to point out weaknesses than to bestow praise, it should be remembered that nothing that will be said is intended to detract from the judgement already passed. But that judgement is limited in its application; it has reference only to the situation where a professional man is confronted with a client. It does not take into account the attitude of the organized professions towards those who do not become clients under the existing system. It is this attitude that we now propose to investigate.

Professional men are not philanthropists. They ask for a decent living in return for the services which they perform. But if they were called upon to give an account of themselves, they could

¹ *Handbook for Recently Qualified Medical Practitioners* (1926), p. 14.

show that gratuitous service is often given to those in need. No one who examines the daily activities of professional men can fail to be profoundly impressed by the generosity which an ideal of service brings forth, and which is none the less real because it is not advertised. But it is within the knowledge of all, and it should be especially apparent to the members of the professions, that a large part of the population is so situated that it cannot command professional services. The poor, no less than the rich, require legal advice in the absence of which they cannot even ascertain their rights. A system of justice is a mockery when a great part of the population remain ignorant of their rights and lack the means of enforcing them. The doors of the courts of justice, it has been remarked by an eminent judge, are open to rich and poor alike—as are the doors of the Ritz Hotel. If the question was what individual members of the legal profession have done, we could point to the Poor Man's Lawyers; there could scarcely be too much praise for the philanthropy of members of both branches of the legal profession who have devoted time and energy to these institutions.¹ But admittedly they only provide for a fraction of the need, and it cannot be hoped that they will ever do much more. When we ask how the legal professional associations have proposed to meet this difficulty, the answer is that they have produced no policy; when interrogated they point to the Poor Man's Lawyers and indicate that the expansion of these services is the only line of advance.² It is not the poor alone who suffer under the existing system; the expenses of litigation are such that large firms and corporations find the burden almost insupportable. But such reforms as have been proposed by the legal profession itself are anything but far-reaching. We shall return later to possible solutions of these difficulties; what we are concerned to point out here is the remarkable contrast between the attitude towards the individual client on the one hand and towards the needs of the community on the other.

The medical needs of the poorer part of the population are more pressing than its legal needs. A distinction may be drawn between the problems of public health and of family medical attention. The solution of the first problem does not touch private medical practice; it requires the organization of administrative medical services. The B.M.A. has a long history of activity in relation to public health and there is much to its credit in this field; but its

¹ For an account of the Poor Man's Lawyers see *The Final Report of the Committee on Legal Aid for the Poor* (1926), Cmd. 3016.

² The reference is to the majority *Report of the Committee on Legal Aid for the Poor* (1926), Cmd. 3016. The majority included all the legal members of the committee.

treatment of the second problem is another story. We have referred to its attitude to medical clubs and to the setting up of the National Health Insurance scheme, both of which were designed to do something to supply family medical attention. The B.M.A. was more concerned with discovering and emphasizing difficulties in these schemes than with attempts to improve them. Its own comprehensive *Proposals for a General Medical Service for the Nation* was published in 1930. In the introduction we are told that:

'during the past twenty years the attention of the public has been directed more than ever before to the subject of the "Health of the People". . . . The B.M.A., as a body representing the great majority of doctors in this country and in the British Empire, has not been inactive all this time. It has, indeed, been busily engaged in studying in detail various aspects of the question. . . . The Association now feels itself to be in a position to piece these plans together and to submit to the public a coherent and inclusive scheme of medical service based on a few simple basic principles.'¹

Since admittedly the public has been deeply concerned over these matters for a couple of decades, it has had to wait a long time to hear the policy of the leading medical professional association.

The apathy of the legal and medical professions towards the problem of providing for the needs of those with whom they are not personally confronted is characteristic of the free-lance professions. What did architects do during the last century when they saw buildings multiplying by the million to house those who, as things were, could not pay for architectural advice? We could put a similar question in regard to other professions. It would not be correct to say they did nothing, but it would not be far from the truth. The defence for apathy is that nothing can be done. When these people, the defence seems to run, realize their needs and can pay for advice, all will be well. This defence becomes suspect when we find professional associations stirred into activity by the threatened capture by other workers of a field which they do not at present cultivate because it is not profitable. The council of the B.M.A. describes the recent developments in the provision of ophthalmic treatment as follows:

'Experience gained in recent years has shown that large sections of the poorer classes are not receiving the ophthalmic medical advice and treatment of which they are in need, and the principal reason is that they cannot afford to pay the ordinary fees of ophthalmic medical

¹ *The British Medical Association's Proposals for a General Medical Service for the Nation* (1930), p. 7.

practitioners. They are therefore obliged to make use of sight-testing opticians or go to a hospital. The Association has always maintained that the first of these alternatives is wholly undesirable. . . . The second alternative is also undesirable except in really necessitous cases, which form but a small section of the population referred to. The question became more urgent with the persistent demand by the sight-testing opticians for State registration. In 1927 the Government appointed a departmental committee . . . and it was quite evident from the committee's report that unless provision was made within a reasonable time for an ophthalmic medical service, which would conform to the economic needs of the poorer classes, the claim of the sight-testing opticians for State registration could not be resisted. The outcome has been the introduction of a scheme.' ¹

Under this scheme the National Ophthalmic Treatment Board was set up consisting of representatives of the B.M.A. and of the Association of Dispensing Opticians, and treatment at reduced fees was made available for those coming under the National Health Insurance scheme, their dependants, and others in similar circumstances. The council of the B.M.A. admits the need which laymen might have called pressing long ago; but in its view it only became pressing when there was a probability that this field of practice would escape from the grasp of its members.

The attitude of the B.M.A. to opticians is very different from that which they have exhibited towards nurses, midwives, and biophysical assistants. The Association, after prolonged and careful inquiry, gave its support to schemes having as their object the improvement of the training of nurses and midwives and their attainment of a higher and more assured status. More recently it has been mainly responsible for setting up a roll of biophysical assistants. The difference in attitude is to be explained by the fact that nurses, midwives, and biophysical assistants do not threaten to encroach upon the field of practice marked out by doctors as their own. The activities of the B.M.A. have done much to render medical services more efficient but little or nothing to spread them over the gaps where they do not exist.

Can ways out be found whereby the community can escape from the situation in which its poorer members cannot pay for professional services? It is generally true that under the existing organization of the free-lance professions little progress can be made. It would be a confession of failure to permit practitioners of lower quality to fill the gap by charging lower fees. But something can be done by modifying the existing organization. In order to provide the services of architects for those building small houses,

¹ *British Medical Journal (Supplement)* (1930), vol. i, p. 140.

a scheme has been set on foot under the auspices of the R.I.B.A., in conjunction with the Council for the Preservation of Rural England, the basis of which is

'the formation of panels of qualified architects in each district throughout the United Kingdom to produce good designs for small houses, or, in fact, for any small buildings. . . . The panel of each district will consist of those architects who are best qualified to deal with small housing work. . . . From the designs submitted in each district a small jury of the Royal Institute [of British Architects] will select the best and stamp them with their seal of approval, so guaranteeing to the public a design of definite merit. After approval the designs will be continuously exhibited in a centrally situated office, and any one interested in a small building speculation, be he private investor or speculative builder, will have the opportunity of making his selection from a large number of designs of all kinds and prices. The fees for the architectural services of a panel will be lower than those formerly paid to unqualified men. Any builder who wishes to build, say, five pairs of houses of average cottage size will find that the fees, which include the personal interest of his qualified architect, will not amount to more than £2 or £3 per house.'¹

Under a scheme of this kind which enables fees to be reduced, partly by economies due to organization and co-operation and partly at the expense of the practitioner, professional services may be extended to wider circles.

It is evident, nevertheless, that there is no complete solution to be found in projects which depend upon a reduction in the average emoluments of the professions. Under certain circumstances the economies resulting from the formation of co-operative associations of clients may be such that professional income is not affected. If under these circumstances those likely to require professional services band themselves together and contract with a practitioner to render service when required, personal attention, as under the system of private practice, may be made available and the income of the practitioners may remain unaffected.² There is no reason, therefore, why this method should not be extended so long as it provides a reasonable income for the practitioners. Nevertheless the professions, and especially the medical profession, have shown themselves hostile to co-operative associations of clients. The medical profession, as will be remembered, took strong objection

¹ *The Times*, 13th Mar. 1931.

² It is strongly held by the medical profession that the medical services of the community must be based upon the family doctor, and the arguments for this view have recently been presented by the B.M.A. with clarity and force (see *The British Medical Association's Proposals for a General Medical Service for the Nation* (1930), p. 10). It is important, therefore, to realize that the relation of practitioner to client which is involved in family medical attention is not incompatible with the co-operative system.

to one form of co-operative association and was led to engage in 'the battle of the clubs'.¹ The principal objection of the profession to these clubs was that they touted for members, and that the governing committees were composed of persons wholly unacquainted with professional standards and methods who looked upon the doctor as a servant hired by them to do as he was told. But co-operative associations of clients need not advertise or attempt to swell membership in an objectionable fashion; and even if the governing committee is composed of laymen, they need not be of a type that is unable to understand the necessity for professional freedom. There seems to be no reason why a doctor contracting with a co-operative association should not be in as satisfactory a position as a doctor serving under a hospital committee.

The objection of the medical profession is not limited, however, to co-operative associations, the constitution and methods of which are obviously open to criticism. Five years ago certain ladies in Chelsea promoted a co-operative clinic; middle-class mothers who paid 5 guineas a year could join and obtain advice about child welfare. The ladies approached the B.M.A. and asked for advice about this type of organization. The matter was debated by the Representative Body of the B.M.A. and the following editorial comments on the debate appeared in *The Lancet*:

'There are one or two subjects which still make the blood run faster through medical veins, and the assembly was quickened into liveliness last Saturday by picking up the scent of a possible menace to private practice. At first sight the quarry seemed unworthy of the chase, besides having the best intentions; but the meeting was unimpressed by its innocent and affable appearance, doubtless remembering that similar qualities could be claimed for the first rabbits entering Australia. The fact that the ladies of Chelsea had politely sought the Association's advice about the best way to administer their clinic for middle-class babies or "paying centre for infant hygiene" in no way softened the hearts of those who, believing the proper person to advise a middle-class baby about his bath, clothes, diet and general upbringing was the practitioner who would attend him when he was ill, could not conceive the possibility that the practitioner might welcome in many circumstances a reinforcement of his task.'²

The objection of the medical profession to co-operative associations has, in fact, been pressed beyond the point at which it can be upheld. It is valid, as has been admitted, against certain forms of these associations, but it ceases to be valid when it is merely that they are 'insidious inroads' into private practice.³ The attitude

¹ See p. 93.

² *The Lancet* (1928), vol. ii, p. 174.

³ *British Medical Journal* (1927), vol. i.ii, p. 383.

of the profession to these 'insidious inroads' recalls its attitude to the provision of ophthalmic treatment by opticians. There is resentment at the invasion by other workers or new organizations of fields which cannot be profitably cultivated under an unmodified system of private practice.¹

Co-operative associations, however, cannot cover the whole field because there are sections of the population whose contributions to any co-operative scheme would not yield a reasonable income to the practitioners. To solve the difficulty the State has stepped in, and in some cases has formed would-be clients into what are in effect compulsory co-operative associations, adding funds from other sources to their contributions. But it has done more than this. Instead of leaving the persons falling under the schemes to make their own arrangements with practitioners, it has itself either engaged the practitioners or framed regulations governing the terms of their engagement. There results what we propose to call the socialization of the professions. Socialization now meets with much favour, and it is often suggested that it should be more widely extended. The problems raised, however, are so important that they require separate consideration.

The Socialization of the Professions

It is necessary to explain with more exactitude the term socialization as we use it. Among professional men employed by the State it is possible to distinguish three types. There is the administrative civil servant without a specialized technique who is employed to take decisions, subject to the responsible minister, and to see that those decisions are made effective. Many decisions of policy, however, cannot be taken or executed without expert technical advice, and thus the State is led to employ a variety of technicians, such as doctors, engineers, and architects, who form a second type.

The administrative and technical civil servants have this much in common: they are employed to advise and assist the government itself and not individual members of the public. The public are affected only in the indirect sense that all government activities are undertaken in the interests of the community at large. The distinction between the second and third types of professional state employees may be illustrated by certain proposals recently put

¹ It will be noticed that the above discussion completes, so far as there is space here, the attempt to deal with questions asked on p. 101 regarding the activities of the B.M.A. We have discussed medical remuneration and methods of raising it (p. 459), medical ethics and etiquette (p. 440), and in this section the attitude towards the need of the public for medical services.

forward for the institution of a Public Defender, supposedly analogous to the Public Prosecutor. The latter is a state employee of the second type; he is a technician, and he serves the community only in so far as the community benefits by the bringing of offenders to justice. The skill of the Public Defender, on the other hand, should such an office be created, would be placed at the service, not of the government, but of the individual prisoners whose defence he would be called upon to undertake. A Public Defender has not been appointed. But the Education Acts have already given us a Public Teacher and the National Health Insurance Acts a Public Doctor. It is for cases such as these, where the State employs technicians to give direct service to individual members of the public, that we reserve the term socialization.

Over the first two classes of its professional employees the State must, it is clear, exercise authority in respect both of admission and dismissal. Admission to the civil service is in the hands of the Civil Service Commissioners, who are nominated by the Crown; while dismissal from the service is also within the discretion of the Crown. The civil servant holds his appointment during pleasure and not during good behaviour. In consequence the civil service 'unlike other great professions is not and cannot in the nature of things be an autonomous profession'.¹ In the case of the civil service no other kind of system is desirable or even possible; but all that has been said about the professions will have been without avail if it is not admitted that, under these arrangements, the way is blocked for developments of great potential usefulness. Since a profession, so disciplined and ordered from above, cannot be responsible for determining what constitutes competence and what constitutes honourable conduct in relation to its specific duties, openings for initiative are severely restricted and few modes of expression are left to the vitality which is latent in every professional group. Moreover, it can make no corporate contribution by advancing policies concerning matters of public interest within its own sphere of experience and by attempting through propaganda to get them accepted, and we shall find that activities of this nature are among the most valuable services that a profession can perform.

These restrictions apply to the profession of administrative civil servant because the profession is coterminous with government employment. They do not apply to doctors, chemists, engineers, and so on as a whole, but only to such of them as have been

¹ *Report of the Board of Enquiry appointed by the Prime Minister to investigate certain Statements affecting Civil Servants* (1928), Cmd. 3037, para. 3.

engaged by the State as technical civil servants. So long as the State only employs a fraction of the members of these professions, their self-determination is not impaired or endangered. They derive their primary professional status, not from the State, but from their professional organizations. The State goes into the market and bids for their services, just as private employers do; if they are dismissed by the State, they can look for employment elsewhere. Should the State, however, become their sole employer, dismissal would mean inability to practise their craft; furthermore under such conditions the State could not permit an organization of practitioners to confer a hall-mark of competency because that would mean that the employees and not the employer would decide who should be employed. The status of the technical civil servant would become assimilated to that of the administrative civil servant.

In the case of a socialized profession the State must be similarly free to determine whom it shall engage and whom it shall dismiss. But a fraction only of the members of a profession may be engaged under conditions of socialization, and in that case, as in the case of the technical civil service, the self-determination of the profession will not be affected. Indeed, the position of the profession will largely depend upon the extent to which its members are so engaged. The fraction may be so large that self-determination is endangered or rendered impossible. But socialization does not only raise these problems; members of a socialized profession continue to render their services directly to individual clients and have thus a dual responsibility—to their clients on the one hand and to the State on the other. The method of socialization must now be examined with these facts in mind.

We may select the certificated teachers as the first example of a socialized profession. Teaching is an ancient profession, but when the State organized its schools, it did not draw its teachers from among the existing practitioners for obvious reasons; it virtually created a new profession—that of the certificated teachers. Because the State makes a grant in aid of their salary, it must determine what constitutes fitness to teach and what is a ground for dismissal. The Board of Education is in fact empowered to recognize teachers and to lay down the conditions which must be fulfilled before recognition is granted; in other words the Board controls entry to the profession, and has full disciplinary powers.¹ Moreover, certificated teachers have so few chances of obtaining

¹ In the case of elementary school teachers the regulations provide that 'if and so far as the Board declare a teacher to be unsuitable for employment on

employment elsewhere than in government schools that their position is assimilated to that of the administrative civil servant; that is to say, they have no corporate responsibility for their competence and honour and the normal expression of professional vitality is therefore restricted. But that is not all. Since their services are rendered directly to pupils and their parents, certificated teachers have a dual responsibility; they must obey the rules laid down by the State, and at the same time they feel impelled to fulfil their professional ideals whatever the rules may say. Thus they are moved to attempt to extricate themselves from the difficulties involved not only in the absence of self-determination but in the presence of this dual responsibility.

The long and involved story of the Teachers Registration Council is to be read as the account of the efforts of the teachers to find a solution. But admittedly the institution of the Council has made little or no difference since the State has not relinquished its control. The difficulty is serious; the teachers work under a system of rules which inhibits vitality and initiative, and yet of all professional services education is the least amenable to rules. Nowhere is freedom of experiment more necessary; nowhere is it more essential that an outside authority should not intervene between a practitioner and his conception of his professional duty. If the government continues to organize the provision of educational services on the present lines, it is hardly possible to do more than associate the members of the profession with the Board of Education in an advisory capacity, and changes of this nature are no more than palliatives. The difficulties of socialization, as here defined, cannot be escaped when an entire profession is socialized. We must therefore ask whether an alternative method cannot be found.

Socialization is the method that has been adopted for filling the gap left by the failure of unmodified private practice to provide services for all who need them. Is it not possible that a way out might be found in the shape of government assistance to the formation of co-operative associations? A scheme has been outlined under which the State would give to parents educational warrants of a value corresponding to the present cost of education in government schools; parents would be responsible, as at present, for seeing that their children were educated, but they would

grounds of misconduct or grave professional default, the teacher must not be employed' (*The Education Code* (1926), clause 19); and 'the Board may, at any time, on educational grounds, recall or suspend the recognition of a teacher' (*The Education Code* (1926), Schedule I, para. 7).

exchange these warrants for services in such schools as they chose.¹ If parents could only cash the warrants at schools staffed by persons registered by the Teachers Registration Council, we should have a system under which the parents, in co-operation, and with the financial assistance of the State, contracted directly with the members of a self-governing profession. It is not possible to enter into the consideration of any of the numerous problems which immediately present themselves; it is enough to indicate a possible alternative to the present scheme.

Our second illustration will be taken from the medical profession. When the State decided to organize the provision of medical treatment for those who could not pay for it, it did not create a new profession of state doctors; it entered into contracts with existing doctors and compelled a certain section of the population to come within the scheme. Any registered practitioner may enter his name on the medical list, which means that the State leaves it to the licensing bodies, acting under the G.M.C., to determine the qualifications necessary for entry.² But though the State is prepared to make contracts with practitioners approved by the professional registration authority, it retains in its hands power to say which practitioners shall keep their names on the medical list. If the Minister of Health is satisfied after inquiry that the 'continued inclusion in the list of any medical practitioner would be prejudicial to the efficiency of the medical service of the insured' the Minister may remove his name³ and he becomes disqualified for inclusion in any medical list.⁴ The retention of this power is inevitable, so long as the scheme continues to possess its present fundamental characteristics. But it has given rise to great difficulties which spring from the dual responsibility; the responsibility of the doctor to his patient may dictate, or seem to dictate, a course of action that is not permitted by the rules, obedience to which is owed to the State. In the attempt to solve such difficulties an extremely complex system has been evolved.⁵ Safeguard has been piled upon safeguard in order to make the position of the practitioner secure when he is following the dictates of his professional conscience. But the power of dismissal remains ultimately with the Minister, and it does not seem that any scheme, however elaborate, can be satisfactory under which this is the case.

The position of the doctors is not the same as that of the certificated teachers because only a part of the medical profession

¹ Frank Roscoe, *Educational Grants for Parents*. Supplement to *The Independent School*, Mar. 1929.

² 14 & 15 Geo V, c. 38, s. 24 (2) (b).

³ *Ibid.*, s. 24 (2) (i).

⁴ *Ibid.*, s. 24 (6).

⁵ See Appendix VI for an account of the system.

is socialized. So far no difficulties have arisen over the question of entry to the profession; but it may be that, with the increase of state medicine, the State will cease to permit a body, almost entirely composed of practitioners, to hold sway over this aspect of professional organization. In the disciplinary sphere serious difficulties have already made themselves apparent. The fraction of the profession socialized is so large (at least half the registered practitioners in practice are on the medical list) that the Minister is in a position to take away the chief means of livelihood from most practising doctors. If the existing system of health insurance is to be preserved without fundamental change, the Minister must continue to control policy; but equally if the medical profession is to continue to order its affairs, the right of the doctor to earn a living must not be revocable at the command of the Minister. Can the system be amended so as to assure to both parties the rights which are desirable? It might be possible to confine the functions of the Minister to the issue of instructions to doctors who accepted service on the medical list. These instructions might form part of their contracts. Disputes as to whether the instructions had been observed would be heard by a specially constituted legal tribunal with medical assessors, and its decisions would be final, subject only perhaps to an appeal to a higher legal tribunal. Alternatively it might be desirable to explore a method on the lines of the system of educational warrants referred to above.¹

There remains another method to be described whereby professional services are made available to the indigent. In certain cases the State has given the poor litigant and the poor prisoner access to professional assistance, of which he can avail himself, provided that there are members of the legal profession who are willing to render service under the scheme. In civil actions the position is governed by the Poor Persons Rules and in criminal cases by the Poor Prisoners Defence Act. Any person who can show that he is not worth more than £50,² that his usual income does not exceed £2 a week,³ and that he has reasonable grounds for taking, defending, or being a party to proceedings in the High Court or Court of Appeal, is entitled to be remitted court fees, and to have a solicitor and counsel assigned to him from panels of solicitors and counsel kept for that purpose.⁴ The administration of the scheme, including the holding of an inquiry into means, was

¹ For foreign methods of solving the problem see *International Studies on the Relation between the Private and Official Practice of Medicine*, ed. Sir A. News-holme (1931), 3 vols.

² In special circumstances £100. ³ In special circumstances £4 a week.

⁴ *The Rules of the Supreme Court*, 1883, Order XVI, rules 22, 23, and 28.

originally entrusted to a government office known as the Poor Persons Department. The Department has since been abolished and its duties handed over to the Law Society, which acts in conjunction with the local law societies. Counsel acting under the Poor Persons Rules is not entitled to make any charge for his services. The solicitor may, in the discretion of the Taxing Master, be allowed to recover from the client actual out-of-pocket expenses; and where it appears to the court that the special circumstances of the case require it, he may be allowed something in profit costs.

In criminal proceedings any person committed to trial for an indictable offence is entitled to free legal aid, where his means are insufficient to enable him to pay for it, and where either he is charged with murder or the circumstances are such that it is 'desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence'.¹ The solicitor is allowed a fee of £2 16s., in addition to travelling and out-of-pocket expenses, and counsel a fee of £3 3s. In special circumstances these figures may be increased. But these amounts are not paid by the client (or out of the costs of the other side) as under the Poor Persons Rules. Like the expenses of a prosecution for felony they fall on the county or county borough rate.

This method may be described as the organization by the State of professional charity. It is a good method in so far as it does not involve intervention between practitioner and client. But it is not capable of wide extension. This is not because professional charity is limited so much as because the provision of services in this manner on a wide scale could only be made at the expense either of richer clients or of a reasonable standard of living of the practitioners.

Professions and Public Policy

In the course of their ordinary activities professional associations are led to consider problems of public interest, as is sufficiently illustrated by the preceding discussion of socialization. This is not the only channel through which these associations find themselves involved in public questions. When they have study functions, they are drawn into public activities by another road; the study of the professional technique now and then reveals obstacles which stand in the way of its application and policies are formulated to clear the path.

¹ 20 & 21 Geo. V, c. 32, s. 1 (3) (b).

Study activities are widely undertaken in the professional world; desire to study and advance the technique, which they share in common, is in fact one reason why professional men associate together. But in some professions study of this kind is little developed; and in others, though developed, it is not pursued by the professional association but by a pure study association. In the legal profession the study of law in its application to modern problems is little pursued, and there could scarcely be any more marked contrast than that between the legal profession and the medical profession—the latter with its numerous and active study organizations. One reason is that the legal profession has not fully recovered from the period of fossilization; it never underwent a silent revolution, such as overcame the medical profession with the uprising of the apothecaries and the subsequent invigoration of the ancient corporations. Another reason is the loss of contact between the legal profession and the universities which has set up a vicious circle. The study of law is not followed as much by universities in this as in other countries because they do not license for the profession. In consequence practising members of the profession are not initiated into the habit of studying more than the routine aspects of their craft, and the great majority of lawyers fail to develop an interest in study for its own sake. Those who do develop such an interest remain for the most part cut off from the practice of the law, with the result that their work, though extremely valuable, is highly academic in character and tends to flow in historical rather than practical channels. Want of contact with the universities may also be advanced to explain the small amount of study interest exhibited by the accountants, who have been accused by economists of missing great opportunities. It is not surprising that they should miss them when, in the course of preparation for entry into the profession, they have made no study of economics or of any other fundamental field of investigation pursued in universities.

In some other cases the study interest is very much alive but finds its satisfaction otherwise than through the professional association. There were academic students of chemistry long before there were professional chemists, and fully adequate facilities for study were early evolved in the shape of a pure study organization. When the Institute of Chemistry came into being, the Chemical Society was providing all the necessary facilities, and there remained only educational and other allied functions for the Institute to perform. The existence of a proprietary journal has sometimes checked the development of the study functions by the

professional association, as in the case of the veterinary surgeons.¹ If a professional association is to pursue study functions, it must possess its own journal and its own library; they are indispensable if it is to become a repository of special knowledge. Meetings may be useful but are not essential. The desirability that study activities should form an integral part of the work of any professional association cannot be too strongly emphasized. To mention the least important reason first, they form a useful bond between the members in the absence of which it may be difficult to keep them together because they may not seem to get enough in return for their subscriptions. That is one of the difficulties of the Institute of Chemistry. Secondly, if study interests are satisfied elsewhere, the association is left with economic problems as its chief interest; and these matters tend to assume an undue importance. But the most important reason is that professional men have something to contribute as the result of study which no one else can supply. They may not be as well placed as academic students of the science, upon which the professional technique is based, to make contributions to that science; but they alone are in a position to observe how the technique works in the everyday world. A professional man has one foot in the academic world and the other in the world of affairs; the academic man knows what is theoretically possible, the professional man knows what is possible in practice, or at least he is in a position to discover what is possible and to make it known. This is his unique province for observation, and it is here that he can contribute to knowledge.

Professional associations thus enter upon public activities, sometimes led by self-regarding motives; but so long as the claims made do not go beyond what is necessary in the way of remuneration, status, and conditions of work in order to make the service efficient, self-regarding activities are not only not incompatible with the public interest but may be said to promote it. They are also led into public activities because obstacles are found to stand in the way of the full and efficient use of the professional technique. Over against them stands the democracy in need of the expert. 'The establishment of a right relationship between Knowledge and Power is the central problem of modern democracy.'² Professional associations are not the only repositories of knowledge, but they are the repositories of a very special kind of knowledge; and the

¹ *The Veterinary Journal* became the property of the National Veterinary Medical Association in 1921. *The Solicitor's Journal* and *The Accountant* are proprietary journals.

² Alfred Zimmern, 'Democracy and the Expert', in the *Political Quarterly*, vol. i (1930), p. 7.

problem of the establishment of proper relations between them and the democratic State is one of the urgent problems of the day.

If it was merely a matter of the issue by the State to professional associations of invitations to help and advise, the problem would resolve itself into a discussion of appropriate occasions and methods. But the professional associations are centres of initiative and vitality, and it is of the highest importance that they should make advances and not wait until they are invited. Indeed there is far more to be hoped from the initiative of these organs of society than from the State. What is the proper scope and manner of presentation of their public policies? There are certain broad issues of public policy concerning which every citizen should be in a position to come to a decision; if there is a reasonable standard of education, these issues can be grasped by all alike because ethical judgement rather than special knowledge is involved. Professional associations should not take sides on these issues, even if all members think alike; if they do so, they are inevitably suspected of being moved by political and not by professional motives, not only on these but on all other occasions, and their influence with the public as experts is undermined.

Taking these principles as a guide, it follows that professional associations of lawyers should not concern themselves with the problem of capital punishment or even with the treatment of juvenile offenders, nor should doctors as a group express an opinion on the question whether every effort should always be made to prolong the lives of the suffering and incurable. All these matters are broad issues of public policy. On the other hand, the legal professional associations may properly press their policy, and indeed ought to do so, in respect of legal procedure, land registration, and codification. Similarly, doctors should call attention to their views about the notification of diseases. The ordinary citizen is little qualified to form any opinion about problems of this latter class; he may not even know that they exist. These problems raise no ethical issues and come within the field of knowledge special to the professions which are not fulfilling their duties to the public if they do not point them out and suggest remedies.

There remains the important middle field, where the matter in question is technical in detail, but raises certain ethical issues. Should the State desire to call for advice there is no difficulty, because it can limit its questions to matters within the special sphere of competence of those whom it consults. But when the professions press their policies on their own initiative, difficulties present themselves. Thus the question of a general medical

service for the nation raises some broad problems that all can understand. But medical considerations invade every aspect of the matter, and it cannot but be desirable that the medical profession should frame its own suggestions for a comprehensive scheme. Similarly town and country planning is not merely technical; it raises questions regarding the rights of property. In spite of this it is desirable that architects should review the situation and formulate a policy. Nevertheless there is a danger that a comprehensive scheme may wear a political aspect and impress the public as part of a political programme instead of appearing as a suggested solution of a public problem by persons with special knowledge. This danger can be avoided if the professional associations found their schemes on a documented case and present them as the result of a prolonged and serious study upon an appropriate occasion. From this point of view the action of the B.M.A. in making its recent pronouncement may be welcomed. As an example of the wrong method of intervening we may instance the letter sent to *The Times*, when the Agricultural Land (Utilization) Bill was before Parliament, and signed by the Presidents of the Chartered Surveyors' Institution and the Auctioneers' and Estate Agents' Institute and by the Vice-President of the Land Agents' Society. The letter contains the following passage: 'One of the objects is to maintain and extend the usefulness of the profession those bodies respectively represent for the public advantage; and it is difficult to conceive a better method of so doing than by their putting their expert knowledge and experience at the disposal of the public when measures affecting agriculture are under public consideration.'¹ 'Under public consideration' here meant that the bill had passed its third reading in the House of Commons; acute political controversy had been aroused and the season for dispassionate consideration had passed. Moreover the letter continues as follows: 'What then are the facts? The bill contains, in our view, no proposals having as their object the restoration of prosperity to agriculture or the better utilization of agricultural land; without these any scheme having for its main purpose a large increase in the number of small holdings, even though for occupation by experienced men only, seems to us doomed to failure.'² The writers present no documented case but content themselves with this *ex cathedra* pronouncement. The nature of the pronouncement and the occasion selected for making it are wholly inappropriate for a professional association. With whatever justice these associations may claim to be 'free from party influence',³ their action was obviously an invitation to the House

¹ *The Times*, 13th Feb. 1931.

² *Ibid.*

³ *Ibid.*

of Lords, based on supposedly expert knowledge, to throw out a measure, when no shadow of an argument had been put forward in support of the adverse judgement. Since they speak of agriculture as 'in its present straits',¹ these associations might well have invited attention to any reasoned proposals they had to make aiming at raising the industry out of its plight, provided that they had chosen a time when acute political controversy was not raging. As it was, they took a step which could only undermine the confidence of the public in professional guidance.

No serious thought has been given to the problem of the methods which professional associations should employ to present their views and which the State should use to obtain their advice. The need for serious thought is obvious when it is realized how much excellent planning by persons entitled to be heard comes to a dead end. Much use is made of the familiar but inadequate mechanism of Royal Commission, Departmental and Advisory Committee. The Departmental Company Law Amendment Committee, 'before embarking upon the examination of witnesses, . . . caused a memorandum, setting out the various headings under which suggestions were invited, to be sent to such individuals, corporations and institutions as the Committee thought best able to assist them'.² Professional associations were prominent among those to whom invitations were sent.³ Nine professional associations submitted statements to the Royal Commission on National Health Insurance and sixteen gave evidence before the Royal Commission on the Income Tax. It has been claimed that 'during the last sixty years practically no public inquiry affecting agriculture, land tenure, property of any kind, rating or taxation has been held by Royal Commission, Departmental Committees, or other form of investigations' upon which members of the Chartered Surveyors' Institution have not sat or before which they have not been called to give evidence.⁴ The annual report of the Institution of Civil Engineers for 1927-8 gives a list of thirty-one administrative or advisory bodies upon which the Institution is represented. Mechanism of this kind is useful, but it is not enough. On the other hand, professional associations have made some attempts to obtain parlia-

¹ *The Times*, 13th Feb. 1931.

² *Report of the Company Law Amendment Committee* (1926), Cmd. 2657, p. 3.

³ Among them were the Law Society, Institute of Chartered Accountants, Chartered Institute of Secretaries, Society of Incorporated Accountants and Auditors, Central Association of Accountants.

⁴ See 'Sixty years of the Institution', a paper read by the Secretary at the Diamond Jubilee Meeting in 1928; Chartered Surveyors' Institution, *Transactions*, vol. lxi (1928-9), pp. 2 ff.

mentary representation; there was considerable activity in this direction in the years immediately following the War. Special funds were raised and support was given to selected candidates. This method has fallen out of favour in the last few years, and it may be condemned without hesitation. Direct representation inevitably appears to be intended to promote sectional interests and therefore exposes the associations to the suspicion of being self-interested.

It is impossible to enter upon a discussion of the improvement of existing methods and upon a search for new mechanisms; such a discussion would carry us into the field of the machinery of government, which is beyond our province. No more can be said than that there should be many channels of communication between Knowledge and Power and that they should be kept wide open. There should be a free circulation of proposals and of criticisms, and the mechanism should be flexible and capable of easy adaptation as circumstances demand.

IV

PROFESSIONALISM AND THE SOCIETY OF THE FUTURE

IN the preceding Parts of this book we have surveyed and analysed professionalism; criticisms and constructive proposals were made where there seemed to be a call for them. But such a method of attack upon so large a field fails to touch certain broad problems, and it now remains to deal with these; we have to ask how far professionalism, as we have defined it, is likely to spread, and what contribution it will have to make to the society of the future.

We have found that the application of an intellectual technique to the ordinary business of life, acquired as the result of prolonged and specialized training, is the chief distinguishing characteristic of the professions. The multiplication of such techniques and the segregation out of those who practise them is likely to continue; the most interesting question, however, in relation to the spread of professionalism, is the extent to which it is likely to invade the world of what is commonly known as business. We have taken note of the existence of a typical professional association among ship-brokers, and there are associations of other brokers which in some respects resemble professional associations. But brokers are general agents; as such they stand somewhat apart from the world of business, as ordinarily understood, which is concerned with the extraction, manufacture, storage, transport, and distribution of goods. Using the term business in this sense, it is usual to draw a distinction between employers and employed. The latter include salary earners, and among them have long been found chemists, engineers, actuaries, accountants, and other professional men; we have also observed the rise of a professional association among the salaried practitioners of insurance, and there exists among bankers an organization which may some day deserve that title. But development along these lines will never bring all those holding the more responsible salaried positions into professional associations unless business management becomes a profession; this is so because many of the most important posts are, and must continue to be, concerned only with administrative functions. We have already touched upon the likelihood of the evolution of a profession of business administration. There are indeed already definite signs of its emergence; but its coming is likely to be slow because the technique is generalized rather than specialized. Where a technique

is specialized, the rise of a profession is unescapable; where it is generalized, its coming must wait upon the growth of a sense of a common responsibility in order that the loose bond, created by the possession of a common but ill-defined technique, may be drawn more tightly.

There is thus good reason to suppose that by slow steps those holding the higher salaried positions in the world of business will come within the professional orbit; that is to say, they will follow at the beginning of their careers special courses of theoretical and practical training, in consequence of which they will build up associations of that form and with those aims which we have found invariably to arise under these circumstances. But would not employers remain outside and uninfluenced by the development? It may first be observed that the increase in size of the industrial and commercial unit implies an increase in the relative proportion of employees to employers; moreover, there is also a growth in the importance of the duties which fall to those occupying the higher salaried posts. Therefore, if salaried business administrators became professional men, we may in any case anticipate that much of the most important work will be in professional hands. Nevertheless if employers remain outside, those with powers of ultimate control will not themselves come under professional influences. Who, however, are the employers? At one time it was easy enough to discover them; they promoted and organized the concern, bore the financial risks, and took the ultimate decisions. But in the case of large concerns, with which the future seems to lie, most of the functions which formerly fell to them have been delegated to others—promoting to financial corporations, risk bearing to shareholders and insurance companies, organizing to managers. To the men at the head of a large concern there remains only the function of taking ultimate decisions, though the importance of this function should not be belittled. When we ask who performs the function, we find that they are increasingly drawn either from among professional men, such as accountants, or from among salaried managers—that is to say from among those who are about to come under professional influence. There is less and less place in the positions, which carry powers of ultimate direction, for men ignorant of any professional technique and of that kind of training and experience out of which a technique is now being evolved. It is true that there is not, and never can be, a technique of directing; there can, therefore, never be a profession of directing. There is truth in the idea that the man who directs must be a born director; there is also truth in the notion that a good surgeon or a good

architect is born and not made. But whereas men with suitable gifts can be directly trained to be surgeons and architects, the same does not altogether hold good of men born to control. The latter, however, can exercise their powers far better, if they are selected from among the managerial group, than if they attain to these responsible posts without any technical equipment.

We may therefore suppose that, under a system of large-scale commercial and industrial organization, all those who occupy the important positions will gradually come within professional associations, or at least under professional influences. If so, we can reply to the question raised in a previous page regarding the supposed incompatibility between profit-making occupations and professionalism. It is difficult to imagine how entrepreneurs of the old type could ever have become professional men; their functions were so diverse that they could never have elaborated a specialized technique; they were isolated one from another, and the barrier of profit stood in the way of a professional relation of practitioner to client. But the entrepreneur of the old type is vanishing. We have discussed the rise of techniques among his successors, who, it is to be further noticed, have little personal concern with profit. The organizations for which they work must be profitable, but their own interest in profit is indirect. So much is this so that some have questioned whether efficient management and direction are possible where there is little or no personal financial responsibility on the part of the ultimate controllers. This, however, need not concern us; what is relevant to our discussion is that the incompatibility of profit-making with professionalism is ceasing to be an obstacle in the way of the spreading of professionalism throughout the world of business.

There remain those who are engaged either in routine intellectual occupations or in manual labour, and among them vocational association has already gained a firm hold. Their vocational associations lack the characteristics and potentialities of professional associations because they are not moulded by the responsibility of preserving, developing, and applying an elaborate technique. Indeed they are at present largely devoted to self-regarding and restrictive aims. But science advances and techniques multiply. In the long run technical advance implies an increase in the number of those doing more or less specialized intellectual work relative to the number of those who are engaged in manual labour or in unspecialized intellectual routine. It may be that, while the extension of professionalism upwards and outwards will be fairly rapid, its extension downwards, though gradual and

almost imperceptible, will be continuous. Thus, taking the long view, the extension of professionalism over the whole field seems in the end not impossible.

If evolution goes this way, what changes in the structure and functioning of society may be expected to follow? Hand in hand with specialized training goes the selection for training of those with suitable gifts, or as it is now called, vocational guidance. Opportunities for specialized training are being gradually extended to all, and we may therefore look forward to a system of careers open to trained and tested talent. This should be a factor making for social stability since it tends to reduce social injustice. Advancement to responsible positions would be more by reason of proved competence and experience than by luck, influence, and pushfulness; this should lead to greater efficiency. More important than this would be the effect upon the world of business where the desire to see the professional technique fully and effectively used would provide a non-self-regarding motive. Professional pride in the proper conduct of business organizations, which is not now wholly lacking, would receive a great reinforcement.

The greatest danger, perhaps, in such a development, against which safeguards might be required, is the reappearance in a new form of what is known to students of early society as a segmentary social organization. In early days a man was born into a group, upon which certain functions were devolved, where he remained all his life irrespective of his gifts. In the days to come, a man may be held to be born into a vocation, not because it was that of his parents, but because it has been selected for him according to his supposed inborn gifts. The passage from vocation to vocation should be made as easy as is compatible with efficiency. The barriers round each vocation should be raised no higher than is necessary in order to keep out the inefficient. There is already a tendency to demand the possession of certificates with too great insistence; it is visible, for example, in the world of state-aided education with the ludicrous result that teachers in universities, of intellectual eminence and proved teaching capacity, are ineligible to teach in, or at least to gain a high position on the staff of, an elementary school. This reacts upon teachers who come to be considered as people who are incompetent for all but teaching. It may well be that a spell of work in some job, demanding only an intellectual routine, which could soon be acquired by any educated man, would be pleasant for, and beneficial to, a teacher; but as things are, teachers must teach all their lives. Certification may become a snare; the forcing of every one at an early age into

watertight compartments may remove the sense of adventure and impair the spirit of initiative. Hence the importance, stressed above, of keeping doors open into every profession for those who do not enter by the usual gate, and decide, perhaps only relatively late in life, what vocation they wish to pursue.

Though much might be said in elaboration of this theme, we should not be led to consider the fundamental aspects of the relation of professionalism to society if we pursued this path. It is necessary for this purpose to turn back and to take as our starting-point the fact that professions can only be said to exist where the practitioners come together in free association. Desire to associate and ability to do so are the pre-requisites of professionalism, and not only of professionalism but also of any society which is vital and free. When men cannot associate, they are not free; when they do not wish to associate for common ends, they have no living purposes. Free fellowship is evidence of vitality and freedom. But it may be 'an aimless and even an anarchic social force'¹ leading to unconstrained and lawless movements, at war one with another and incompatible with what has been evolved before. Thus free fellowship may be a force making for the disruption of society; it is so when it results from the mere loosening of ancient bonds and the consequent anarchic activities of masses which have got adrift. If it is to be constructive as well as vital, it must be purposeful and based upon the recognition of concrete and definite needs; there must be 'the downward pressure of the old formula';² the new elements must take shapes which are in harmony with the old pattern. If these conditions are fulfilled, the resulting associations will exert a stabilizing as well as a progressive influence upon society.

Many of the old centres of association have lost their power of binding men together; fellowships are no longer built up round religion and locality. But the impulse to free association has never been more vigorous than during the last century; men find opportunities of enlarging their contacts with their fellows and of satisfying their interests by membership of associations to an extent that has never been known before. Of the many centres of association there is not one which is more compelling than the vocation which a man pursues. Vocations have been centres of association ever since the spreading of the great wave of association over Europe in the eleventh century; and with the disappearance of the stronger among the competing loyalties they have become still more

¹ G. Unwin, *The Gilds and Companies of London* (1908), p. 12.

² *Ibid.*

prominent. Moreover, the social changes of the last hundred and fifty years have brought into existence a community of salary and wage earners to whom vocational problems are of more importance than they were to their ancestors.

Professional associations are a form of vocational association and they have shared in the increasing prominence of all such associations. Since they are distinguished by the fact that they are built up round intellectual techniques, we may expect to find that they will draw their principal characteristics from that source. In the first place, how far, in consequence of this fact, are the professions likely to be progressive elements in society? At the present day many professions are based upon sciences; and nothing, short of the onset of a glacial age in the history of human mental activity, could now check the onward march of these sciences. The scientific professions are obviously borne along by the progress of the knowledge upon which they are based; no one has, in fact, ever suggested that chemists, engineers, physicists, actuaries, or even architects and others, whose technique is only in part scientific, cling to antiquated methods and outworn formulas and exhibit repugnance to new ideas. But the same is not always true of those professions whose technique is institutional; the interest of men in such matters may falter and fail, and these professions may stagnate. All professions, however, influence one another; and where institutional professions are practised alongside others, it is most unlikely that they will be uninfluenced by those which have this safeguard against stagnation. Therefore it is reasonable to anticipate that the progressiveness shown by the scientific professions will in future be characteristic of all.

If this is true, how are we to explain the widespread conviction that the professions are unprogressive? There are two senses in which the term progressive may be used in this connexion. It may be employed in a narrow sense when regard is had only to the professional technique; it may also be used when the attitude towards social and economic problems is in mind. Putting aside for the moment the attitude of the professions towards these problems, let us consider the reasons for holding that the professions are unprogressive in the narrower sense. Those who hold this view point to the dark ages of some professions in the eighteenth century, especially of the physicians and of the lawyers; the memory of these ages is kept alive by the novels of Dickens, and it is of the picture that he draws of his day, and not of the world around them, that many still think when they hear of lawyers. But closer acquaintance with the history of the professions in the eighteenth

century shows that the stagnation of the lawyers and physicians provides no evidence of a general tendency towards that condition. We have given some account of the surgeons and apothecaries at that time, and we have seen that they were active, vigorous, and progressive, borne along in fact by the progress of the underlying sciences. Such progress did they make and such activity did they show, that they brought about a diminution of the death-rate which was the main cause of the huge increase of population at that date. Moreover, these remarkable achievements of the surgeons and apothecaries were accomplished at a time when professions of ancient lineage were stagnating, and there could be no more decisive proof of the falsity of the generalization, founded upon the cases of the physicians and lawyers, that professions are essentially unprogressive.

That professional organizations are stable elements in society is less open to question. Their members are conscious of the past; they are aware of a long chain of endeavours towards the improvement and adaptation of the technique. The old formula presses upon them; they inherit, preserve, and hand on a tradition. They know that nothing is to be achieved in their own sphere by destruction or revolution, and they assume that the same applies in other spheres. Professional associations are stabilizing elements in society. They engender modes of life, habits of thought, and standards of judgement which render them centres of resistance to crude forces which threaten steady and peaceful evolution. But the service which they render in so doing is not sufficiently appreciated. It is largely due to them and to other similar centres of resistance that the older civilizations stand firm. The newer civilization of America is threatened by forces which bend the social structure this way and that; they may put its delicate mechanism out of gear or even shake it to the ground. In no other country can public opinion be so easily exploited by experts in that art; movements are set on foot, demanding support in the cause of uplift, whose ambitions know no bounds and whose successes bewilder Americans and astonish the rest of the world. 'In the older nations where the civilization is more subtle, the currents of public opinion break down or wear themselves out against established institutions that have grown up like fortifications throughout the centuries.'¹ The family, the church, the universities, certain associations of intellectuals, and above all the great professions, stand like rocks against which the waves raised by these forces beat in vain. In America the community requires protection not against

¹ A. Siegfried, *America Comes of Age* (1930), p. 245.

the State but against itself. In Russia a small minority, armed with all the powers of the State, having first destroyed are attempting to rebuild, guided by a crude dogmatic formula. Their success in destruction was made possible by the absence of those stable elements to which free association has given rise in the countries of the West.

We have still to examine the charge that the professions are unprogressive in their attitude to the larger problems of social organization. It is alleged that they are 'groovy'. 'Each profession makes progress, but it is progress in its own groove', says Professor Whitehead. Serious thought is confined to a narrow range of facts and experiences and there is no 'concrete contemplation of the complete facts'; 'the remainder of life is treated superficially'. 'The dangers arising from this aspect of professionalism are great particularly in our democratic societies. The directive force of reason is weakened. The leading intellectuals lack balance. They see this set of circumstances, or that set; but not both sets together.'¹ That this criticism is generally true must be admitted; it is not, however, that professional men are innately reactionary or unprogressive, but that they lack vision. They do not grasp the essential features of the social and economic structure and the place of the professions in it. Moreover, in so far as they do interest themselves in matters outside the development of their own technique, they often fail lamentably to display the same standards of exactitude and judgement as they demand with rigour in their immediate spheres. The pity of it is that their opportunities are so great and that they have so large a part to play, if only they would open their eyes and summon up courage to act in the larger issues of contemporary life. Let us first take note of the relations between the professions and the social and economic structure; having observed what part professional men might take in the world around them, we ask how they might come to act.

The professional man is in touch with pure science and its latest developments, using that word in the broad sense given to it by Professor Alexander,² and he carries out his work in the world of affairs. He is or might be a mediator between the world of pure study and the world of everyday life; more than that, since the same language is not spoken in both, he is an interpreter. There is often a certain futility about the pure student called upon to give practical advice; he knows what is theoretically possible, but he does not know what is practically possible. The professional man

¹ A. N. Whitehead, *Science and the Modern World* (1926), pp. 275 and 276.

² See p. 377.

knows what is acceptable to the world as it is, and therefore how much out of the theoretical possibilities can be put into effect and in what manner. Professional associations could be, and in part already are, repositories of knowledge of this kind. Nor is this all. Professional men are craftsmen, and all craftsmen are distressed to see bad workmanship and to observe that opportunities for the employment of their craft have been neglected. The architect cannot but dislike faulty town-planning; the engineer cannot fail to be troubled by inefficient machinery and neglect to employ new sources of power. There is an unescapable desire, though it may be latent, to see the fullest and most efficient use made of professional techniques in the service of the community.

In other words one function of the professions is to bring Knowledge to the service of Power.

'The needs of the post-war world are such that popular government is doomed unless it calls to its aid those who hold the keys to the solution of its problems. In the seventeenth and eighteenth centuries, before democracy had become the vogue, it was not unusual for a prince to ask the advice of a scholar. Hobbes and Locke, Montesquieu and Voltaire, Leibnitz and Spinoza, all had their admirers in high places. But such patronage was a luxury. To-day, in the bewildering mass of our problems, the association between scientific inquiry and the art of government has become a prime necessity. Knowledge is power. Authority without knowledge is powerless. Power dissociated from knowledge is a revolutionary force. Unless the modern world works out a satisfactory relationship between expert knowledge and popular control the days of democracy are numbered.'¹

The matter at issue here is not merely the making of government efficient. Democracy has still to be made a reality. The suffrage has been extended as far as is possible, but never before have men felt so little able to control the forces which shape their daily lives. The suffrage is a symbol and no more; the citizen may use it to express fear or anger; he may neglect to use it and thus show his boredom. Effective intervention must begin in the spheres of which men have special knowledge. 'The issue which we have to face is not whether the common man is or is not to have a share in government. It is whether his share is to be an unhelpful participation in a clumsy system of checks and balances, or an allocation corresponding to the special contribution he is fitted to make.'² 'When the modern citizen realizes that his voting power is only one, and not the most part, of his political responsibility and that the community relies on him as an element in a worthy public

¹ A. Zimmern, *Learning and Leadership* (1928), p. 61.

² A. Zimmern, *Prospects of Democracy* (1929), p. 351.

opinion on the issues of his speciality or occupation, democracy will be on a far firmer basis than that made for it by the eighteenth and nineteenth century theorists.'¹

The building of bridges between Knowledge and Power is the first necessity. Could that be achieved, the latent creative energy of the professions would be liberated. Bridge-building, however, is not all that is requisite in order that professionalism may make the full contribution which it has to offer to the solution of social problems. We have seen what it may do in relation to the world of business, and in relation to a modern democracy. But the troubles which it may there assist to alleviate are not the most deeply seated of the evils of modern society. Owing to the growth in the size of communities, the increasing complexity of organization, the appearance of huge corporations, and the employment by the State of its powers of direction, the individual member of the community feels helpless. He works under direction, and there is little to arouse his sense of responsibility; the air is heavy with oppression in the face of which he is apathetic unless roused into uninformed and violent protest. These protests may take the form of attacks against capitalism and other imaginary systems, but they are seldom or never directed against the very obvious chains which bind men down with ever increasing success.

To fulfil his function in the ordinary business of life a man must perform his special service. To this end, except in very primitive societies, he combines with his fellows and sets up co-operative organizations. By organization is here meant any form of association or institution the object of which is the production of goods or the rendering of services; the commonest form of organization in the modern world is the limited liability company. These organizations are erected for special purposes, some temporary and some enduring; but they find their justification only in so far as they enable men to do in co-operation what they could not do apart. They attain, however, lives and values of their own; it is no longer asked of them whether they perform any useful service. Men immolate themselves before organizations, unless indeed they rise up in their wrath and destroy them; and in this there lingers something of the outlook of primitive man. That what should be regarded as mere social and economic machinery should thus escape from control is the most serious single menace to social progress and well-being. It is enough to take as an illustration the condition of the press in all countries—a vital matter to social welfare.

¹ A. Zimmern, *Prospects of Democracy* (1929), p. 363.

If men are to control their social and economic machines, it is essential that they should grasp their nature and purpose and see them as secondary products—secondary in the sense that they exist solely in order that men should be able to render their special services. This being so, what should professional men—giving a lead to other vocations—do in order that they may play their proper part in the world around them? The way out is not to be sought in any revolutionary changes such as are vaguely envisaged in proposals that go by the names of syndicalism and gild socialism; nor does it lie in the substitution of vocational for geographical representation. Nothing more is required than a shifting of emphasis from organizations, which are mere machinery, to vocational associations. Men now give their primary loyalty to organizations and meet in their vocational associations only to lament, if indeed they consider more than technical problems, that the existing machinery does not enable them properly to provide their special services of which the community has need. If men found in vocational associations their permanent anchorage and shelter, they could set out from those secure positions to shape organizations into instruments for the fulfilment of their purposes. That which is important is that organizations should be regarded as instruments to be created and remodelled where necessary by those who, by these means, render specialized services: schools by teachers, newspapers by journalists, and so on. So long as men are unable effectively to shape the institutions through which they serve, they will feel helpless; and if they feel helpless in regard to matters affecting their own vocation and its daily exercise, they will feel still more helpless in regard to matters beyond their immediate ken. On this account it is most undesirable that professional associations should be replaced by what we have called industrial institutes. Where there is an industrial institute, training, testing, and certificating entrants, the present organization tends to dominate, and the profession comes to be regarded as existing merely in order to keep it in being. The proper relation of profession to organization is thus reversed. Those whose vocation is banking should not be moulded by the present organization. They should feel themselves to be the representatives of a great profession; they may or may not find the present organization adequate; in any case they should be disposed to regard it critically and to feel that it is their instrument and not their master.

It does not fall to us here to attempt to outline how they might seek to work their will. But where there is a will there is a way; and we are concerned here only with those bodies through which alone

the will can be expressed. Among these bodies associations of practitioners are the most important. To take an example, in order to render newspapers honest and informed, it is essential that those whose function it is and, we may also say, whose desire it is, to render honourable and efficient journalistic service, should associate together and seek to make their will effective from that standpoint. The second step in this and other instances lies beyond the scope of this discussion; it is necessary only to emphasize that it need not demand structural changes but merely a moulding of institutions to their proper uses. That which now vitiates so much discussion about remedies for existing evils is the neglect of the first step. Never before in the history of the world have men been so aware of social and economic problems; but with an obsession that is obstinate they will not look to their roots. They seek to replace existing organizations by other organizations, unmindful of the fact that organization, in the sense in which the term is employed here, is a secondary consideration. It would be a gross exaggeration to say that organization can be left to look after itself, provided only that men, specially skilled in various directions, feel themselves to be free and desire to use their freedom to render their services. But it is true to say that reorganization will achieve nothing unless it springs from the desire of free men to play their proper part in the world of affairs.

Nor is this all that this shifting of emphasis will achieve. The status of the free-lance worker has long been envied; he calls no man master. It has long been customary to express regret for the relative decline in numbers of persons with this status, and at the same time to say that it is inevitable. Under large-scale organization this decline in one sense is inevitable, but it does not follow that the positions of the salaried and wage-earning workers must remain as they now are. At present there goes with the employed status a sense of dependence; that is so because organizations have been permitted to gain control. Already to some extent this state of things is passing away. The man who belongs to a profession which has won for itself prestige and a position of dignity, may pass from the service of one organization to that of another. Though he remains salaried all his life, he takes his stand upon his proved competence and experience; he serves one client after another much as does a free-lance worker. He is attached primarily to his profession whence he goes out, as occasion may offer, to render his services in some co-operative organization, and whither he returns. The difference between the position of such a man and that of an ordinary salaried worker is not to be found in their respective legal

situations; the difference is subtle, but it is vital; and the position of the former is as enviable as that of the free-lance man. If the shifting of emphasis of which we have spoken comes about, the sense of dependence and oppression will be lifted, and a measure of freedom, dignity, and responsibility given to all men.

APPENDIX I

STATISTICS OF MEMBERSHIP OF THE PROFESSIONS

THE census does not give any reliable indication of the total number of persons practising any profession, since, with a few exceptions such as patent agent and veterinary surgeon, it is open to any one to assume any general designation that he pleases. We have come to regard as professional men only those who are qualified, and for such persons approximate figures are available. In the registered professions there is the register, from which all who do not possess the statutory qualification are excluded; and the number of persons on the register in such professions is shown in Table I. In the unregistered professions there are the well-recognized hall-marking associations, which do not admit to full membership those who have failed to pass clearly defined tests of fitness, except in rare instances where persons of considerable eminence in the profession are concerned. The membership figures for these associations appear in Table II. Nevertheless even these figures are not entirely satisfactory. In some registered professions, such as dentistry, for instance, unregistered persons are wholly debarred from practice, and consequently all who are competent qualify for admission to the register. In others, such as nursing, the statutory privileges secured to registered persons are so inconsiderable that some fully competent practitioners have not troubled to register. In the unregistered professions, despite the valuable institutional privileges which commonly attach to membership of the well-known associations, some qualified persons will generally be found outside their ranks. But not only do the tables exclude some who are qualified, they also include some who are not qualified. In both registered and unregistered professions there are cases where, for reasons of professional politics, persons have been admitted unexamined to the register or hall-marking association as the case may be, for example 'Dentists 1921' and licentiates of the R.I.B.A.

Two other considerations have to be borne in mind in using the figures given. In the first place, in a registered profession, the number of those on the register may include all who have satisfied the conditions required for registration, or it may include only those who remain in active service. Dentists have to pay a substantial fee to retain their names on the register, and the register is virtually therefore a register of those in active service only. Doctors, on the other hand, pay no such fee, and the medical register presumably contains the names of many who have retired. The roll of solicitors may be taken to include all who are qualified; but before he can practise, a solicitor must take out a practising certificate on which duty is payable, and in the number of solicitors who hold such certificates (15,416) we have a figure for those in actual practice. If the proportion of retired is the same among doctors as among solicitors, the number of doctors in active service would be

about 43,000. Similar reasoning cannot be applied to the Bar, where many qualify who have no intention of practising. There is no means of ascertaining the precise number of practising barristers; but the number of those who have addresses in the Law List is believed not to exceed 2,700.

Secondly, the area covered by one register or association is not always the same as that covered by another. This would be less serious if the area covered were always definite; but many registers and associations came into being at a time when Great Britain and Ireland formed a single political unit, and in these cases the existing organization has sometimes remained intact, despite the setting up of a parallel organization in the Free State. Thus Irish licences still give the right to be registered under the English Medical Act although a separate register has been set up under Free State legislation. Consequently the figure for the English medical register must be presumed to include the names of some, but not all, qualified doctors in the Irish Free State. In the unregistered professions boundaries are even less clearly defined. For example the Scottish Chartered Accountants are organized separately from the English, whereas among the Incorporated Accountants this is not so. But all the associations of Chartered and Incorporated Accountants include members who are in practice overseas; while in the R.I.B.A. arrangements are made for holding the Institute examinations in a number of centres throughout the Empire, and its membership roll therefore includes the names of persons who have neither practised nor studied in this country, but who have thought it worth while to qualify for admission to the English Institute.

The considerations already advanced make it almost impossible to arrive at even an approximate figure for the total number of professional workers in this country. It is possible to assemble such figures as there are in a single column and this we have done (see Table III). But before they are used for such a purpose further reservations must be made. Mine managers, officers of the merchant navy, and all teachers who are not certificated or uncertificated are omitted altogether, since figures for these persons are not obtainable. The figure for civil servants is the total for the administrative and executive grades and for the inspectorate. The technical and scientific grade is omitted since those who belong to it are included in the figures of those professions whose qualifications they hold. For the local government service no figure is given, since all who have any claim to the title of professional men are qualified as solicitors, doctors, accountants, engineers, &c. But, inasmuch as many engineers and accountants in the local government service have the hall-mark of a common employment association and not of one of the associations shown in Table II, it is necessary to make an addition to the figures shown in that table, in order to arrive at a total figure for engineers and accountants which shall include those who are employed in the local government service. In the case of the accountants this is not difficult, since we have been informed that of the 680 members of the Institute of Municipal Treasurers and Accountants some 290 are

APPENDIX I. STATISTICS OF

TABLE I

<i>Profession</i>	<i>Number on Register</i>	<i>Area covered by Register</i>
Barristers	11,200	E. & W.
Solicitors	20,000	E. & W.
Patent Agents ¹	343	G. B. & N. I.
Doctors	55,291	British Isles
Dentists	14,422	British Isles
Nurses	52,401	E. & W.
Veterinary Surgeons	3,473	British Isles
Teachers	157,000	E. & W.

TABLE II

<i>Profession</i>	<i>Association</i>	<i>Membership</i>
Engineers	Institution of Civil Engineers	8,826
	Institution of Mechanical Engineers	8,092
	Institution of Electrical Engineers	7,640
	Institution of Naval Architects	2,101
Chemists	Institute of Chemistry	6,050
Physicists	Institute of Physics	508
Architects	R.I.B.A.	6,807
Surveyors, &c.	Chartered Surveyors' Institution	6,200
	Auctioneers' and Estate Agents' Institute	4,868
	Land Agents' Society	925
Accountants	Institute of Chartered Accountants	9,677
	Society of Accountants in Edinburgh	1,042
	Institute of Accountants and Actuaries in Glasgow	1,964
	Society of Accountants in Aberdeen	175
	Society of Incorporated Accountants and Auditors	5,661
Actuaries	Institute of Actuaries	744
	Faculty of Actuaries	252

¹ In patent agency, though all who seek to practise as principals must register, salaried employees need not do so. As a result there are many qualified persons who have fulfilled all the requirements but have not proceeded to actual registration.

TABLE III

<i>Profession</i>	<i>Approximate total of qualified members</i>
Barristers	11,200
Solicitors	20,000
Patent Agents	343
Doctors	55,291
Dentists	14,422
Nurses	52,401
Veterinary Surgeons	3,473
Engineers	26,659
Chemists	6,050
Physicists	508
Architects	6,807
Surveyors, &c.	11,993
Accountants	18,909
Actuaries	996
Civil Servants	7,650
Teachers	157,000

TABLE IV

<i>Year</i>	<i>Number of entries in Medical Register</i>	<i>Number of Fellows and Associates of Institute of Chartered Accountants</i>
1912	41,439	4,485
1913	41,940	4,671
1919	44,510	4,839
1920	44,761	5,337
1921	45,408	5,360
1922	46,476	5,832
1923	48,140	6,103
1924	50,035	6,443
1925	51,738	6,828
1926	52,614	7,242
1927	53,591	7,644
1928	54,336	8,201
1929	54,870	8,720
1930	55,291	9,213
1931	55,604	9,677

TABLE V.

*Number of persons in British Isles to a registered doctor under
the Medical Act of 1858.*

<i>Year</i>	<i>Number of Persons</i>
1881	1,513
1891	1,290
1901	1,137
1911	1,109
1921	1,031
1926	916
1930	881

Incorporated Accountants (very few are Chartered Accountants), and it is only necessary therefore to add the difference between these two figures (390) to the total number of accountants shown in Table II. In the case of the Institution of Municipal and County Engineers (membership 3,317), though there is known to be much overlapping membership with the Institution of Civil Engineers and the Chartered Surveyors' Institution, no actual figures are available. Consequently in the case of the engineers no addition has been made in the table to allow for those who are employed by local authorities and possess a recognized hall-mark, though not that of any of the four institutions shown in Table II.

Attention has been called in Part II to the rapid growth in the number of professions since the latter half of the eighteenth century. In most professions there was also a rapid growth in the number of practitioners, both absolutely and relatively to the population. Outside a few professions, notably the solicitors, whose numbers have remained virtually stationary for over twenty years, the rate of increase in the number of practitioners in recent years has not only been maintained but accelerated. This is shown in Tables IV and V. Table IV gives the number of registered medical practitioners and of fellows and associates of the Institute of Chartered Accountants in the two years immediately preceding the War and in each year since the War. Table V shows the number of persons to a registered medical practitioner in certain years during the last half century.

APPENDIX II

THE REGISTRATION OF ARCHITECTS

THE Architects (Registration) Act 1931¹ is a complicated and obscure statute, which provides for a register of architects, who will be entitled to describe themselves as 'registered architects', but will have no other privilege. To carry the provisions of the Act into effect four bodies are to be set up, the Architects' Registration Council, the Board of Architectural Education, the Admission Committee, and the Discipline Committee.

It is the duty of the Council to keep the register, and to enter therein the name of every person qualified for registration by virtue of having passed a recognized examination or acquired a prescribed qualification.² It is also the duty of the Council to recognize examinations and to prescribe qualifications.³ But the Council cannot itself hold examinations, and it is the duty of the Board to 'recommend' (in the wording of the Act) the recognition of examinations, the Council having no option but to recognize an examination thus recommended.⁴ It is also open to the Board to 'recommend' that it (the Board) shall hold an examination, and in this case also the Council has no option but to direct the Board to hold the examination and to include the passing of the examination in the prescribed qualifications.⁵ Nevertheless it would appear that the Council can prescribe alternative qualifications which give the right to be registered equally with the examinations held by the Board or recommended by it for recognition by the Council.⁶

The need for the Admission Committee is by no means apparent. Its sole function is 'to consider every application for registration under this Act and to report thereon to the Council as to whether or not the applicant is, in the opinion of the Committee, qualified for registration'.⁷

The majority of the Council will consist of nominees of the professional associations; but the R.I.B.A. will stand upon the same footing as the two new associations which the registration movement has called into being.⁸ Each will be entitled to appoint one nominee in respect of every five hundred of its architect members. The same privilege is enjoyed by the Association of Architects, Surveyors, and Technical Assistants, which is primarily an organization of salaried employees,

¹ 21 & 22 Geo. V, c. 33.

² Ibid., ss. 3 (3) and 6 (1). Architect members of the Royal Academy and persons in practice at the commencement of the Act are entitled to be registered automatically.

³ Ibid., ss. 6 (1) and 13 (1).

⁴ Ibid., ss. 5 (2) and 6 (3).

⁵ Ibid., ss. 5 (2) and 6 (4).

⁶ Such at least is our interpretation of *ibid.*, s. 6 (1), when read in conjunction with s. 13 (1), and also with the phrase 'may include' in s. 6 (4).

⁷ Ibid., s. 5 (3).

⁸ See *ibid.*, c. 33, First Schedule, for the constitution of the Council.

and by the Architectural Association, which has thus secured an important privilege, since the majority of its architect members are also members of the R.I.B.A. The allied societies have the right of jointly nominating one member of the Council for every five hundred persons who are architect members of one or other of them without at the same time belonging to one of the bodies before mentioned. Registered persons not belonging to any association will elect one member of the Council in respect of every five hundred of their number. In addition there will be one nominee of the Ulster Society of Architects, five nominees of various government departments, and one nominee each of the following seven bodies:

- The Chartered Surveyors' Institution.
- The Institution of Structural Engineers.
- The Institution of Municipal and County Engineers.
- The Society of Engineers.
- The Institute of Builders.
- The National Federation of Building Trades Employers.
- The National Federation of Building Trades Operatives.

The Board, unlike the Council, will be fixed in size.¹ It will be composed in part of registered architects appointed by the Council, in part of nominees of the schools of architecture, and for the rest of nominees of other institutions, more or less closely connected with teaching, the building trade, or the architectural profession. Of its seventy-five members twenty-four will be the nominees of the Council, and sixteen will directly represent the schools of architecture. Of the sixteen, ten will be appointed, one each by the ten principal schools of architecture, four jointly by the remaining schools, and one by the President of the Architectural Association, while the Director of Education of the Architectural Association will sit *ex officio*. The thirty-five nominees of other institutions will be appointed six by the universities, four by the Association of Technical Institutions, three by the Royal Society of Teachers, two each by the Institute of Builders and the National Federation of Building Trades Operatives, and one each by the following persons or bodies:

- The Head Masters Conference.
- The Incorporated Association of Head Masters.
- The Association of Head Mistresses.
- The National Society of Art Masters.
- The National Association of Principals of Technical Institutions.
- The Association of Teachers in Technical Institutions.
- The Royal Society of Arts.
- The Royal Academy of Arts.
- The British School at Rome (Faculty of Architecture).
- The Union of Educational Institutions.

¹ See 21 & 22 Geo. V, c. 33, Second Schedule, for the constitution of the Board.

The Workers Education Association.

The Central Education Committee of the Co-operative Union.

The Education Officer of the London County Council.

The Master of the Art Workers Guild.

The President of the Town Planning Institute.

The Association of Architects, Surveyors and Technical Assistants.

The Royal Incorporation of Architects in Scotland.

The Ulster Society of Architects (Incorporated).

It will be noted that the two (or three) bodies last mentioned are the only professional associations directly represented on the Board.

The Admission Committee is to consist of not less than seventeen or more than twenty-three persons.¹ Of this number five will be nominated, one each by the following bodies:

The Institution of Municipal and County Engineers.

The Society of Engineers.

The Chartered Surveyors' Institution.

The Institution of Structural Engineers.

The Institute of Builders.

The remainder, who must be registered persons, will be appointed, four by the R.I.B.A., four by the Incorporated Association of Architects and Surveyors, one by the Faculty of Architects and Surveyors, and not less than three or more than nine by the Architects' Registration Council. It appears to rest with the Council how many of its nominees shall sit upon the Admission Committee.²

Removal from the register is technically a matter for the Council,³ subject to a right of appeal to the High Court.⁴ But the Council can only act where a registered person has been convicted of a criminal offence, or where the Discipline Committee, after an inquiry held before the Committee, reports that a registered person has been 'guilty of conduct disgraceful to him in his capacity as an architect'.⁵ In other words, though the Council acts as grand jury, inasmuch as the Committee cannot consider a charge unless it 'appears to the Council that . . . an inquiry is necessary',⁶ and though the Council can decline to remove where the Committee has recommended removal, nevertheless it cannot remove where the Committee has not recommended removal, and it is therefore the Committee which has the strongest claim to be regarded as the professional tribunal. The Committee consists of four registered persons nominated by the Council, two nominees of government departments, and two persons appointed by the President of the Law Society. But where the person charged belongs to the R.I.B.A., the Incorporated Association of Architects and Surveyors, the Faculty of Architects and Surveyors, the Architectural Association, the Association of Architects, Surveyors and Technical Assistants, or one of the allied

¹ Ibid., Third Schedule, for the constitution of the Admission Committee.

² Ibid., s. 5 (1) (a).

³ Ibid., c. 33, s. 7 (1).

⁵ Ibid., s. 7 (1).

⁴ Ibid., s. 9.

⁶ Ibid., ss. 7 (3) and (4).

societies, and the Discipline Committee does not already include a member of the association or associations to which he belongs, each such association may appoint an additional person to sit upon the Committee.¹

It only remains to add that the Council is empowered to charge examination fees in respect of any examination held by the Board and also an annual retention fee. Of the total amount received by the Council in fees at least half must be devoted, 'in such manner and on such conditions as the Council may determine, to the provision of scholarships and maintenance grants for the assistance of students in architecture whose means appear to the Council to be insufficient to enable them to pursue their studies'.²

¹ 21 & 22 Geo. V, c. 33, s. 7 (2).

² Ibid., s. 14.

APPENDIX III

REGISTRATION AND RETENTION FEES

THE fees set out in the following table are imposed by, or in virtue of, a statute, with the exception of that part of the barrister's registration

<i>Profession</i>	<i>Registration Fee</i>		<i>Retention Fee</i>	
	<i>Amount</i>	<i>Applicaton</i>	<i>Amount</i>	<i>Application</i>
Barristers	£150 approx.	£75 to Inland Revenue; remainder to Inn	None	
Solicitors	£105	£100 to Inland Revenue; £5 to Law Society	£4-£10	5s. to Law Society's school; 15s. to Law Society; remainder to Inland Revenue
Patent Agents	£5 5s.	Chartered Institute of Patent Agents	£3 3s.	Chartered Institute of Patent Agents
Doctors	£5 1s.	1s. to Inland Revenue; £5 to expenses of G.M.C. under Medical Acts	None	
Dentists	£2	Expenses of G.M.C. under Dentists Acts and of Dental Board; dental education and research and 'public purposes connected with the profession of dentistry'	£2-£4	As in case of registra-fee
Veterinary Surgeons	£1	R.C.V.S.	£1 1s.	Such purposes as R.C.V.S. with approval of Privy Council may determine
Nurses	£1 1s.	Expenses of General Nursing Council	2s. 6d.	Expenses of General Nursing Council
Midwives	None		None	
Architects	None			At least half to provision of scholarships and maintenance grants for students in architecture; remainder to expenses of Architects' Registration Council

fee which is paid to his Inn. This part is composed of a number of items which are shown separately in the second table. In some professions a maximum fee is fixed by statute, e.g. for nurses and dentists; in others, e.g. architects, no maximum is fixed.

Total sums payable in fees, apart from examination fees, by candidates for call to the bar at Lincoln's Inn and the Inner Temple

<i>Inn of Court</i>	<i>Inner Temple</i>	<i>Lincoln's Inn</i>
Fee payable on admission as student	£21	£21 1s.
Government stamp on admission	£25 1s. 3d.	£25 1s. 3d.
Lectures	£12 12s.	£12 12s.
Cost of dinners—total	£13 4s.	£13 10s.
Termly subscriptions during period of student-ship—total	£3 15s.	£3*
Fee payable to Inn on call to the bar	£62	£52
Government stamp on call to the bar	£50	£50 2s. 6d.
Total	£187 12s. 3d.	£177 6s. 9d.

* At Lincoln's Inn this payment can be escaped if £12 out of the £52 payable to the Inn at the date of call is paid at the time of admission. Thus the total at Lincoln's Inn need not exceed £174 6s. 9d. At the Inner Temple the corresponding payment cannot apparently be escaped in this way.

APPENDIX IV

PROFESSIONAL CODES

BELOW are found examples of professional codes. The Warning Notice of the G.M.C. is taken from the *Medical Register*. The Rules as to Ethics of Medical Consultation, as approved by the Representative Body of the B.M.A., are to be found in the Association's *Handbook for Recently Qualified Medical Practitioners*. The ethical rules of the Institution of Civil Engineers are taken from Section IV of the By-Laws and Regulations of the Institution. The Code of Professional Practice of the R.I.B.A. is taken from the annual *Kalendar* of the Institute.

THE WARNING NOTICE OF THE G.M.C.

The *General Medical Council* desire to bring to the notice of registered medical practitioners the following statement, which summarizes the *Resolutions and Decisions of the Council upon forms of professional misconduct* that have from time to time been brought before the Council in the exercise of their disciplinary jurisdiction over the members of the medical profession.

The jurisdiction is conferred upon the Council by the 29th section of the Medical Act, 1858, which is as follows:

'If any registered medical practitioner shall be convicted in England or Ireland of any felony or misdemeanour, or in Scotland of any crime or offence, or shall after due inquiry be judged by the General Council to have been guilty of infamous conduct in any professional respect, the General Council may, if they see fit, direct the Registrar to erase the name of such medical practitioner from the Register.'

It must be clearly understood that the instances of professional misconduct which are given below do not constitute, and are not intended to constitute, a complete list of the offences which may be punished by erasure from the Medical Register: and that by issuing this notice the Council are in no way precluded from considering and dealing with any form of professional misconduct (as, for example, immorality involving abuse of professional relationship) which may be brought before them, although it may not appear to come within the scope or precise wording of any of the categories herein set forth. Circumstances may and do arise from time to time in relation to which there may occur questions of professional conduct which do not come within any of these categories. In such instances, as in all others, the Council have to consider and decide upon the facts brought before them.

1. *Certificates, Notifications, Reports, &c.*

Registered medical practitioners are in certain cases bound by law to give, or may be from time to time called upon or requested to give, certificates, notifications, reports, and other documents of a kindred

character, signed by them in their professional capacity, for subsequent use either in Courts of Justice or for administrative purposes.

Such documents include, among others, Certificates, Notifications, Reports, &c.,

- (a) Under the Acts relating to *births, deaths, or disposal of the dead*;
- (b) Under the Acts relating to *Lunacy and Mental Deficiency* and the Rules made thereunder;
- (c) Under the *Vaccination* Acts and the Orders made thereunder;
- (d) Under the *Factory* Acts and the Regulations made thereunder;
- (e) Under the *Education* Acts;
- (f) Under the *Public Health* Acts and the Orders made thereunder;
- (g) Under the *Workmen's Compensation* Acts;
- (h) Under the Acts and the Orders relating to the *notification of infectious diseases*;
- (i) Under the *National Insurance* Acts and the Regulations made thereunder;
- (j) Under the *Old Age Pensions* Act and the Regulations made thereunder;
- (k) Under the *Merchant Shipping* Acts;
- (l) In connexion with *sick benefit, insurance and friendly societies*;
- (m) For procuring the issue of Foreign Office *passports*;
- (n) For *excusing attendance* in courts of justice, in the public services, in public offices, or in ordinary employments;
- (o) In connexion with *naval and military* matters.

Any registered practitioner who shall be shown to have signed or given under his name and authority any such certificate, notification, report, or document of a kindred character, which is untrue, misleading, or improper, *whether relating to the several matters above specified or otherwise*, is liable to have his name erased from the Medical Register.

2. *Unqualified Assistants and Covering*

The employment by any registered Medical practitioner in connexion with his professional practice of an assistant who is not duly qualified or registered, and the permitting of such unqualified person to attend, treat, or perform operations upon patients in respect of matters requiring professional discretion or skill, is in the opinion of the Council in its nature fraudulent and dangerous to the public health; and any registered medical practitioner who shall be shown to have so employed an unqualified assistant is liable to have his name erased from the Medical Register.

Any registered medical practitioner who by his presence, countenance, advice, assistance, or co-operation, knowingly enables an unqualified or unregistered person, whether described as an assistant or otherwise, to attend, treat, or perform any operation upon a patient in respect of any matter requiring professional discretion or skill, to issue or procure the issue of any certificate, notification, report, or other document of a

kindred character (as more particularly specified in Division 1 hereof), or otherwise to engage in professional practice as if the said person were duly qualified and registered, is liable on proof of the facts to have his name erased from the Medical Register.

The foregoing do not apply so as to restrict the proper training and instruction of bona fide students, or the legitimate employment of dressers, midwives, dispensers, surgery attendants, and skilled mechanical or technical assistants, under the immediate personal supervision of a registered medical practitioner.

3. *Sale of Poisons*

The employment, for his own profit and under cover of his own qualifications, by any registered medical practitioner who keeps a medical hall, open shop, or other place in which scheduled poisons or preparations containing scheduled poisons are sold to the public, of assistants who are left in charge but are not legally qualified to sell scheduled poisons to the public, is in the opinion of the Council a practice professionally discreditable and fraught with danger to the public, and any registered medical practitioner who is proved to have so offended will be liable to have his name erased from the Medical Register.

4. *Dangerous Drugs*

The contravention by a registered medical practitioner of the provisions of the *Dangerous Drugs Acts* and the Regulations made thereunder may be the subject of criminal proceedings, and any conviction resulting therefrom may be dealt with as such by the Council under the powers given them by Section 29 of the *Medical Act*, 1858. But any contravention of the *Acts* or the Regulations, involving an abuse of the privileges conferred thereunder upon registered medical practitioners, whether such contravention has been the subject of criminal proceedings or not, will, if proved to the satisfaction of the Council, render a registered medical practitioner liable to have his name erased from the Medical Register.

5. *Association with Unqualified Persons*

Any registered medical practitioner who, either by administering anaesthetics or otherwise, assists an unqualified or unregistered person to attend, treat, or perform an operation upon any other person, in respect of matters requiring professional discretion or skill, will be liable on proof of the facts to have his name erased from the Medical Register.

6. *Advertising and Canvassing*

The practices by a registered medical practitioner—

(a) of advertising, whether directly or indirectly, for the purpose of obtaining patients or promoting his own professional advantage; or, for any such purpose, of procuring or sanctioning or acquiescing in the publication of notices commending or directing attention to the

practitioner's professional skill, knowledge, services, or qualifications, or depreciating those of others; or of being associated with or employed by those who procure or sanction such advertising or publication, and

(b) of canvassing or employing any agent or canvasser for the purpose of obtaining patients; or of sanctioning, or of being associated with or employed by those who sanction, such employment;

are in the opinion of the Council contrary to the public interest and discreditable to the profession of medicine, and any registered medical practitioner who resorts to any such practice renders himself liable on proof of the facts to have his name erased from the Medical Register.

7. Association with Uncertified Women practising as Midwives.

Whereas it has been made to appear to the *Council* that certain registered medical practitioners have, from time to time, by their countenance or assistance, or by issuing certificates, notifications, or other documents of a kindred character, enabled uncertified persons to attend women in childbirth, otherwise than under the direction and personal supervision of a duly qualified medical practitioner, contrary to law;

And whereas such conduct is in the opinion of the *Council* discreditable to the profession of medicine, and calculated to defeat the purpose of the Statutes made in the public interest for the protection of mothers and infants;

Notice is hereby given that any registered practitioner who is proved to have so offended will be liable to have his name erased from the Medical Register.

By Order of the Council,
NORMAN C. KING,
Registrar.

November 1928.

RULES AS TO ETHICS OF MEDICAL CONSULTATION

(As approved by Representative Body of British Medical Association)

Preliminary: Definition of Term 'Consultant'.

In these Rules the term 'consultant' is to be understood as meaning any practitioner who is called upon by the patient or by any person acting on behalf of the patient, to advise in special circumstances with regard to a patient who is already under the care of another practitioner, that other being referred to as the 'attending practitioner'.

1. Duty of Consultation.

In the interests alike of the public and of the medical profession, it is the duty of a medical practitioner to accept the opportunity of consultation, especially upon obscure and difficult cases, or where the patient or his friends desire it.

2. *Cases where Consultation is Especially Required.*

In the following cases it is especially the duty of the practitioner in attendance to endeavour, if practicable, to obtain the assistance of another opinion:

(a) When a question arises of the propriety of performing an operation or adopting some course of treatment which may be dangerous to life or permanently injure the condition of the patient, especially if the condition which it is sought to relieve by this treatment be not itself dangerous to life.

(b) When a question arises of destruction of a foetus, or unborn child, in the interest of the mother, especially if she is not in labour.

(c) When the practitioner in attendance is in doubt either as to the diagnosis or as to the treatment to be followed, and delay in arriving at a decision might be dangerous.

(d) When there is evidence of anxiety on the part of the patient or his friends as to the correctness of a diagnosis or of the treatment pursued.

(e) When the attending practitioner has reason to suspect:

(i) Performance of an illegal operation.

(ii) Administration of poison.

(iii) Commission of any other criminal offence.

3. *Choice of Consultant.*

It is expedient, in the interests of the patient, that the choice of consultant should usually be left to the practitioner in attendance. Nevertheless, the practitioner is not justified in refusing to meet a consultant selected by the patient, or the patient's friends, unless he is satisfied that the proposed consultant is not qualified by knowledge or special experience to advise upon the case, or that he is one whom he is debarred from meeting on the grounds stated in Rule 4.

4. *Refusal to Meet.*

It is the duty of a practitioner to refuse to meet in consultation:

(a) An unregistered person.

(b) A practitioner whose exclusive profession of any peculiar system of treatment would render consultation futile.

(c) Any practitioner whose conduct has, after due inquiry, been declared by some recognized body of the medical profession to be detrimental to the honour and interests of the profession, such declaration not having been made inoperative by any subsequent pronouncement of the body in question or of any superior ethical tribunal.

5. *Procedure in Arranging and Conducting Consultations.*

The arrangements for consultation should be made by the attending practitioner.

If a practitioner receives an application to act as consultant from any other person than the attending practitioner of the patient, he shall not see the patient without the consent of the attending practitioner.

6. *Etiquette of Consultation.*

The following Rules of medical etiquette are generally recognized by the profession, with respect to arranging and conducting consultations. They should be observed, unless there is substantial reason in any particular case for departing therefrom.

(a) If the consultation is not held at the patient's house, it generally takes place at the house of the practitioner consulted, who also fixes the hour of meeting, unless otherwise amicably arranged.

(b) All parties to a consultation should be punctual. If the attending practitioner does not keep the appointment, the other or others may, after a reasonable time, see the patient, and leave his, or their, conclusions in writing, in a closed envelope addressed to the attending practitioner.

(c) Before seeing the patient, the attending practitioner should, as a rule, give the consultant a brief history of the case.

(d) On entering the room of the patient, the attending practitioner should precede the consultant, and should, if necessary, introduce him to the patient, and the attending practitioner should be the last to leave the room. The diagnosis, prognosis, and treatment should be discussed in private.

(e) The opinion on a case, and the treatment, should be communicated to the patient or the patient's friends by the medical man consulted, in the presence of the attending practitioner.

(f) If it is found necessary that the patient or his friends should be made aware of a difference of opinion among the practitioners taking part in a consultation, it is the duty of the consultant, jointly with the attending practitioner, to communicate this information.

(g) The practitioner in attendance should ascertain previously, and inform the patient or his friends, as to the amount of the fee, which should be paid to the consultant at the time.

(h) If for some reason a personal consultation is impossible, the attending practitioner should write a letter introducing the case, and should courteously and punctually reply to any communication from the consultant, and the latter should write and forward his opinion, along with any prescription he may advise, in a closed letter addressed to the attending practitioner.

(i) Arrangements for a future consultation should be left to the practitioner in attendance.

7. *Communications to Patients in the Course of Consultation.*

Great care should be exercised in making any observations in the presence of the patient on the nature of the malady, its probable issue, or treatment pursued, and all criticisms or reflections on the practitioner in attendance must be avoided. Differences of opinion, so long as there is final agreement among the parties to the consultation, are not to be revealed, but if agreement as to diagnosis and treatment should not be

possible, and the consultant is convinced that the future well-being of the patient is concerned in his so doing, he should inform the patient in the manner prescribed in Rule 6 (f).

8. *After-Care of Patients.*

It is the duty of the practitioner in attendance loyally to carry out the measures agreed upon at the consultation, and he should refrain from making any radical alteration in such measures except upon urgent grounds or after adequate trial.

9. *Consultant not to Injure Position of Attending Practitioner.*

In recognition of the position of trust in which he is placed towards the attending practitioner, the consultant must not, by unduly ingratiating himself or otherwise, attempt to secure for himself a patient, or the relatives of a patient, whom he has seen in consultation, and must exercise scrupulous care to avoid disturbing the confidence of the patient in the attending practitioner.

If the consultant wishes to make any communication with regard to any case which he has seen in consultation, he should only do so through the attending practitioner, and should not discuss the case with the patient or any of the patient's friends, in the absence, or without the consent of the attending practitioner.

10. *Consultant not to Supersede Attending Practitioner.*

A practitioner who has seen a case in consultation should not supersede the attending practitioner during the illness with regard to which the consultation is held, and, if he be asked to attend or prescribe in any future illness, he should only do so after explanation with the attending practitioner unless circumstances make this impossible.

THE ETHICAL RULES OF THE INSTITUTION OF CIVIL ENGINEERS

Every Corporate Member of the Institution shall observe and be bound by the following Regulations:

(i) He shall act in all professional matters strictly in a fiduciary manner with regard to any Clients whom he may advise, and his charges to such Clients shall constitute his only remuneration in connexion with such work, except as provided by Clause (iv).

(ii) He shall not accept any trade commissions, discounts, allowances, or any indirect profit in connexion with any work which he is engaged to design or to superintend, or with any professional business which may be entrusted to him.

(iii) He shall not, while acting in a professional capacity, be at the same time, without disclosing the fact in writing to his Clients, a Director or member of, or a Shareholder in, or Agent for, any contracting or

manufacturing company or firm or business with which he may have occasion to deal on behalf of his Clients, or have any financial interest in such a business.

(iv) He shall not receive, directly or indirectly, any Royalty, Gratuity, or Commission, or any patented or protected article or process used on work which he is carrying out for his Clients, unless and until such Royalty, Gratuity, or Commission has been authorized in writing by those Clients.

(v) He shall not solicit professional work, either directly or by an agent, in any manner which the Council shall from time to time consider professionally improper, nor shall he pay, by commission or otherwise, any person who may introduce Clients to him.

(vi) He shall not be the medium of payments made on his Clients' behalf to any contractor or business firm (unless specially so requested by his Clients), but shall only issue certificates or recommendations for payment by his Clients.

CODE OF PROFESSIONAL PRACTICE OF THE R.I.B.A.

(As revised 6th July 1931)

An Architect in practice, if a member of the R.I.B.A., is governed by established customs accepted and observed by the architectural profession, and more particularly by the charter and By-laws of the Royal Institute which render him liable in case of unprofessional conduct to reprimand, suspension or expulsion at the discretion of the Council.

The following may be considered to record in a general way the practice of architects and also to indicate a standard of conduct in any special cases not specifically referred to therein.

1. An Architect is remunerated solely by his professional fees and is debarred from any other source of remuneration in connexion with the works and duties entrusted to him. It is the duty of an Architect to uphold in every way possible the Scale of Professional Charges adopted by the Royal Institute. An Architect must not accept any work which involves the giving or receiving of discounts or commissions, nor must he accept any discount, gift, or commission from contractors or tradesmen, whether employed upon his works or not.

2. If an Architect own, or have a commercial interest in, any material, device, or invention used in building, he must inform his client thereof, and must obtain his sanction before permitting it to be used in works executed under his direction.

3. An Architect must not advertise nor offer his services by means of circulars or otherwise. He may, however, sign his buildings when completed, publish illustrations or descriptions of his work, and exhibit his name outside his office and on buildings in course of execution, including those where he is acting as Architect for alterations and additions, provided it is done in an unostentatious manner, and the lettering

of his name does not exceed two inches in height. With the client's approval, any such boards may remain for a period not exceeding two months after the completion of the building, provided they do not display 'to let' or 'for sale' or similar notices, but they may indicate that the plans may be seen at the Architect's office. Architects who are surveyors to recognized estates may announce land or sites or premises for sale or letting in connexion with their appointments or when they are acting as Architects for the development of land or sites.

4. An Architect must not attempt to supplant another Architect, nor must he compete with another Architect by means of a reduction of fees or by other inducement.

5. An Architect, on receiving instructions to proceed with certain work which was previously entrusted to another Architect, shall, before proceeding with such work, communicate with the Architect previously employed and inquire and ensure the fact that his engagement has been properly terminated.

6. In all cases of dispute between employer and contractor the Architect must act in an impartial manner. He must interpret the conditions of a contract with entire fairness as between the employer and the contractor.

7. An Architect must not permit the insertion of any clause in tenders, bills of quantities, or other contract documents which provides for payment to be made to him by the contractor (except for duplicate copies of drawings or documents) whatever may be the consideration, unless with the full knowledge and approval of his client.

8. An Architect should not take any part in a competition as to which the preliminary warning of the Royal Institute has been issued, and must not take any part in a competition as to which the Council of the Royal Institute shall have declared by a Resolution published in the *Journal* of the Royal Institute that Members must not take part because the conditions are not in accordance with the published Regulations of the Royal Institute for Architectural Competitions, nor must he be associated in any way with the carrying out of a design selected as the result of a competition as to which the Council shall have declared by a Resolution published in the *Journal* that Members must not take part.

9. An Architect must not act as Architect or Joint Architect for a work which is or has been the subject of a competition in which he is or has been engaged as Assessor.

An Assessor must not act as Consulting Architect, unless he has been appointed as such before the inception of the competition, nor in any other professional capacity in any matter connected with the work which has been the subject of the competition, provided always that he may act as Arbitrator in any dispute between the Promoters and the selected Architect.

If an Architect is officially approached by the Promoters for advice as to the holding of a competition with a view to his acting as Assessor, and eventually it is decided not to hold a competition but to appoint

an Architect to carry out the work, the Architect originally approached in an advisory capacity is precluded from acting as Architect for the work in question.

10. It is desirable that in cases where the Architect takes out the Quantities for his buildings he should be paid directly by the client and not through the Contractor except with the previous consent of the client.

11. The business of Auctioneering and House Agency is inconsistent with the profession of an Architect.

12. An Architect must not accept an appointment in any commercial firm in which the extent of his remuneration is affected by the profits of the firm.

APPENDIX V

ANALYSIS OF PENAL CASES BEFORE THE G.M.C.

THE Minutes of the General Medical Council give certain information relating to penal cases considered by the Council. The accompanying tables present an analysis of cases considered during the years 1929-31 inclusive. A case can be brought before the Council in the first instance either on a conviction by the courts or as a result of a charge of unprofessional conduct. In the former event the Council does not inquire into the facts, but accepts the finding of the court. On the facts so found it may (1) proceed to erase the offender's name from the register, or (2) decide not to erase, which amounts to a dismissal of the case with a warning, or (3) postpone judgement until a later session (usually six months or a year), thereby in effect putting the offender on his good behaviour. In the case of a charge of unprofessional conduct the procedure differs, inasmuch as the facts themselves have to be investigated by the Council. If the facts are not substantiated the case is dismissed outright; if they are proved, then the same three alternative courses are open to the Council as in the case of a conviction by the courts.

The first two tables should be looked at with these facts in mind. It will be observed that during the period in question forty-seven cases were brought before the Council, sixteen as a result of criminal convictions and thirty-one on charges of unprofessional conduct. Of the latter ten were dismissed outright, the Council not being satisfied as to the facts alleged. There were thus thirty-seven cases in which allegations were established sufficiently to enable the Council to erase if it should think fit. In fact erasure was directed in fifteen cases only, while six cases were dismissed with a warning. In the remaining sixteen cases judgement was postponed with a view to putting the offender on his good behaviour.

TABLE I
Convictions before the Courts

<i>Nature of offence</i>	<i>Number of cases</i>	<i>Case dismissed with warning</i>	<i>Judgement postponed</i>	<i>Erasure ordered</i>
Drunkenness, dangerous driving, &c.	12	..	11	1
Offence against Dangerous Drugs Act	1	1	..	..
Indecent assault	1	..	..	1
Forgery	1	..	..	1
Larceny	1	..	..	1
Total	16	1	11	4

What happened to these sixteen persons? The method of investigation adopted does not permit of the following up of every case originating within the three-year period; indeed, inasmuch as judgement is sometimes postponed several times in succession, it would be a matter of some difficulty to trace every case to its conclusion. Table III, however, gives particulars relating to every adjourned case considered during the period irrespective of when it originated. It is therefore as fair a sample of adjourned cases as the previous tables were of cases originating during the period, and the fact of a single case appearing in it more than

TABLE II
Charges of Unprofessional Conduct

Nature of charge	Number of cases	Facts not proved or case withdrawn	Facts proved		
			Case dismissed with warning	Judgement postponed	Erasure ordered
Advertising and canvassing	12*	4	1	2	5*
Issuing misleading certificates	6	1	3	2	..
Adultery with a patient	8	5	..	..	3
Gross indecency with a patient	1	..	..	1	..
Covering	1	..	..	..	1
[See note †]	1	..	1	..	..
Loss of qualifications	2	..	..	..	2
Total	31	10	5	5	11

* In one of these cases the offender was found guilty of issuing a misleading certificate as well as of canvassing.

† The charge in this case was as follows:

'(1) That, being a registered medical practitioner, and as such to your knowledge not entitled to receive fees or payment from Approved Societies for dental treatment to members of such Approved Societies, you entered into partnership with one — of —, a registered dentist, for the purpose of using his name and thereby obtaining the fees payable by Approved Societies, in accordance with schemes sanctioned by the Ministry of Health under the National Health Insurance Act, 1924, for dental treatment, to registered dentists only;

'(2) That in furtherance of such partnership and purpose you caused the signature of [the registered dentist] to be affixed to a dental letter by means of a rubber stamp in respect of one —, a patient of yours and a member of the — Society, being an Approved Society, thereby falsely and in breach of the conditions of the scheme for dental benefit representing to such Society that the said [registered dentist] had personally examined the said [insured person] and made an estimate for dental treatment, when in fact, as you well knew, the said [registered dentist] had not personally seen or examined the said [insured person].

'And that in relation to the facts so alleged you have been guilty of infamous conduct in a professional respect.'

once does not destroy its value. It will be noted that the great majority of adjourned cases are subsequently dismissed; some are again adjourned, while erasure, it would appear, seldom results.

TABLE III
Adjourned Cases

<i>Nature of charge or offence</i>	<i>Number of cases</i>	<i>Case dismissed with warning</i>	<i>Judgement again postponed</i>	<i>Erasure ordered</i>
Drunkenness, dangerous driving, &c.	9	7	2	..
Advertising	4	3	..	I
Issuing misleading certificates	2	2	..	..
Gross indecency with a patient	2*	1*	1*	..

* A single case in which there were two postponements of judgement, both falling within the period 1929-31, necessarily appears twice in this table.

APPENDIX VI

CONDITIONS OF SERVICE OF DOCTORS UNDER THE NATIONAL HEALTH INSURANCE SCHEME

THE divided allegiance of the panel doctor to the State on the one hand and to his professional standards on the other has necessitated the erection of a complicated system of checks and safeguards. These are to be found partly in the Act and partly in regulations made under the Act. The regulations are made by the Minister; and he is not bound before making them to consult representatives either of the panel practitioners or of the medical profession as a whole. By way of machinery the Act sets up in every county and county borough an insurance committee. Representatives of insured persons must form the majority of every insurance committee; while the minority is composed as to one-half of representatives of the local authority and as to the remaining half of representatives of the Ministry and of the medical profession.¹ The Act also provides for the setting up of two committees representative of the doctors in each area, the local medical committee and the panel committee. The purpose of the local medical committee is to represent all registered medical practitioners in the area, whether panel practitioners or not; and it must be consulted by the insurance committee on 'all general questions affecting the administration of medical benefit'.² If in any area no local medical committee has been formed, the panel committee may be recognized as the local medical committee for that area. The panel committee is representative of panel practitioners only; and in certain more detailed questions of administration it is the duty of the insurance committee to consult the panel committee.³ These three committees are statutory. The regulations go farther and provide that every insurance committee shall appoint a sub-committee, known as the medical service sub-committee, consisting of representatives in equal numbers of insurance practitioners and insured persons, with an impartial chairman.⁴

It is the duty of the insurance committee, after consultation with the local medical and panel committees, to draw up the terms upon which practitioners are to be invited to serve. These must be approved by the Minister, and except in special circumstances, they must incorporate certain provisions laid down in the regulations.⁵ When the practitioner has accepted service and had his name placed on the medical list, two types of dispute may arise. In considering the safeguards for competency in professions where the practitioner serves private clients and employers, it was found possible to draw a sharp distinction between the legal

¹ 14 & 15 Geo. V, c. 38, s. 48 (3).

² *Ibid.*, s. 51.

³ *Ibid.*, s. 52.

⁴ *National Health Insurance (Medical Benefit) Consolidated Regulations* (1928), article 31.

⁵ *Ibid.*, article 3.

sanction of an action for negligence or breach of contract and the professional sanction contained in the right to strike off the register. In the case of doctors serving under the National Health Insurance Act the distinction between these two types of sanction is still discernible though it is by no means so sharp. There are quasi-civil proceedings for the recovery of monetary penalties analogous to damages where there is an allegation of negligence or of failure to observe the terms of service, and there are quasi-criminal proceedings for the removal of a practitioner's name from the list. But whereas in the typical self-governing professions the power to strike off resides in some organ of the profession itself, and is exercisable only in the event of failure of moral, not technical, competency, under the National Health Insurance scheme the ultimate decision in all cases rests with the Minister alone, while the power to strike off is aimed at technical as well as moral offences inasmuch as it is exercisable wherever the 'continued inclusion in the list of any medical practitioner would be prejudicial to the efficiency of the medical service of the insured'.¹

Beyond giving the Minister power to remove from the list, the Act is silent in regard to penalties and the manner in which disputes are to be investigated. These matters are left to be dealt with by regulation. Under the regulations now in force, 'any matter relating to . . . the discharge by any practitioner of his duties under the terms of service' is generally, and if the panel committee so desire must be, investigated in the first instance by the medical service sub-committee.² Certain special issues, if they arise, are referred to the panel committee or the local medical committee, for instance the question of over-prescribing to the former,³ that of whether an operation or other service rendered or advised was within the scope of the practitioner's obligations to the latter.⁴ From a decision of the panel committee on a question of over-prescribing there is an appeal to a person or body of persons, not being officers of the Ministry, of whom one must be a registered medical practitioner;⁵ while a question of whether any treatment was within the scope of the practitioner's obligations may be referred to three referees, two of whom must be insurance practitioners and one a practising barrister or solicitor, and must be so referred if the insurance committee and local medical committee disagree. On the facts as found by the medical service sub-committee, or by the panel or local medical committee subject to appeal, the insurance committee can do one of three things. They can, after consultation with the panel committee, impose a limit on the number of insured persons to be included in the practitioner's list;⁶ they can make a representation to the Minister that there has been failure or neglect

¹ 14 & 15 Geo. V, c. 38, s. 24 (2) (i).

² *National Health Insurance (Medical Benefit) Consolidated Regulations* (1928), article 32.

³ *Ibid.*, article 42.

⁴ *Ibid.*, article 43.

⁵ *Ibid.*, article 42 (5).

⁶ *Ibid.*, article 34 (2) (a).

to comply with the terms of service;¹ or they can represent to the Minister that the continued inclusion of the practitioner's name in the medical list would be prejudicial to the efficiency of the medical service of the insured,² in which case an inquiry must be held in accordance with the procedure shortly to be described. If they impose a limit on the number of the practitioner's panel patients, or represent that he has failed or neglected to comply with the terms of service, there is an appeal to the Minister,³ who may, if he thinks fit, refer the matter to a body of three or more persons to report to him thereon.⁴ Where the report of the insurance committee includes a finding that the practitioner failed to exercise 'reasonable skill and care in the treatment of a patient', then at least one of the persons appointed to hear the appeal and report to the Minister must be an insurance practitioner.⁵ Subject to this right of appeal, the decision of the insurance committee to impose a limit upon the number of a practitioner's panel patients is final. Where failure or neglect to comply with the terms of service has been proved, the imposition of a penalty, which takes the form of a fine analogous to damages, rests with the Minister, whose decision is final.⁶

In the case of the quasi-criminal proceedings for the removal of a practitioner's name the machinery is less complicated. Proceedings can be set on foot by any person or body, including the Minister himself. If the charge is brought by an insurance committee, local medical committee, or panel committee, an inquiry must be held.⁷ In other cases the Minister has power to dismiss the case summarily.⁸ Where an inquiry is held, the Minister is bound to appoint an inquiry committee, composed of two doctors and a practising barrister or solicitor;⁹ but judgement and sentence remain to the Minister.¹⁰

In the current regulations the doctors secured a further concession, which they did not enjoy before 1928. This takes the form of an advisory committee, which the Minister must appoint, consisting of three medical officers of the Ministry and three insurance practitioners.¹¹ In the case of an inquiry which may result in the removal of the practitioner's name from the medical list, and in the case of any proceeding arising out of alleged failure or neglect to comply with the terms of service, where the allegation is one of failure to exercise reasonable skill and care in the treatment of a patient, the Minister, before coming to his

¹ *National Health Insurance (Medical Benefit) Consolidated Regulations* (1928), article 34 (2) (c). The effect of a 'recommendation' with regard to the withholding of money under article 42 (7) appears to be identical with that of a representation that there has been failure or neglect under article 34.

² *Ibid.*, article 34 (2) (d).

³ *Ibid.*, article 38 (1).

⁴ *Ibid.*, article 39.

⁵ *Ibid.*, articles 39 (3) and 41 (5).

⁶ But see below.

⁷ Unless it is based solely upon an allegation that the practitioner has been convicted of a criminal offence; *ibid.*, article 68.

⁸ *Ibid.*, articles 47 and 49.

⁹ *Ibid.*, article 54 (1).

¹⁰ 14 & 15 Geo. V, c. 38, s. 24.

¹¹ *National Health Insurance (Medical Benefit) Consolidated Regulations* (1928), article 41 (2) and (3).

decision, is bound to refer the case to the advisory committee, and to consider any report which they may make to him thereon.¹ Where failure to comply with the terms of service is alleged, but failure to exercise reasonable skill and care is not alleged, it is still open to him to refer the case to the advisory committee if he thinks fit.² The 1928 regulations have introduced a further innovation in giving the practitioner whose name is liable to be removed from the list the right to submit evidence as to his personal character and professional standing, and the Minister is bound to have regard to such evidence before coming to his decision.³

¹ Ibid., article 41 (2) and rule 66 (1).

² Ibid., article 41 (2).

³ Ibid., article 66 (2).

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